

1246



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Matt Bell	E-MAIL: arrowbell@tctwest.net
ORGANIZATION:	
ADDRESS: 125 Lower South Fork Rd	
CITY/STATE/ZIP: Cody Wyo 82414	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11-15-08

There are two main issues that concern me. The 1st is grazing. With proper rotation methods, distribution of water and monitoring, it has been proven that grazing is beneficial and necessary for a healthy range land & watershed environment.

The second is recreation. There seems to be a handful of people who show no respect for the land. They drive anywhere they want, dump their trash anywhere they want & shoot their guns anywhere they want.

1246

BB RMP Scoping Comment Form

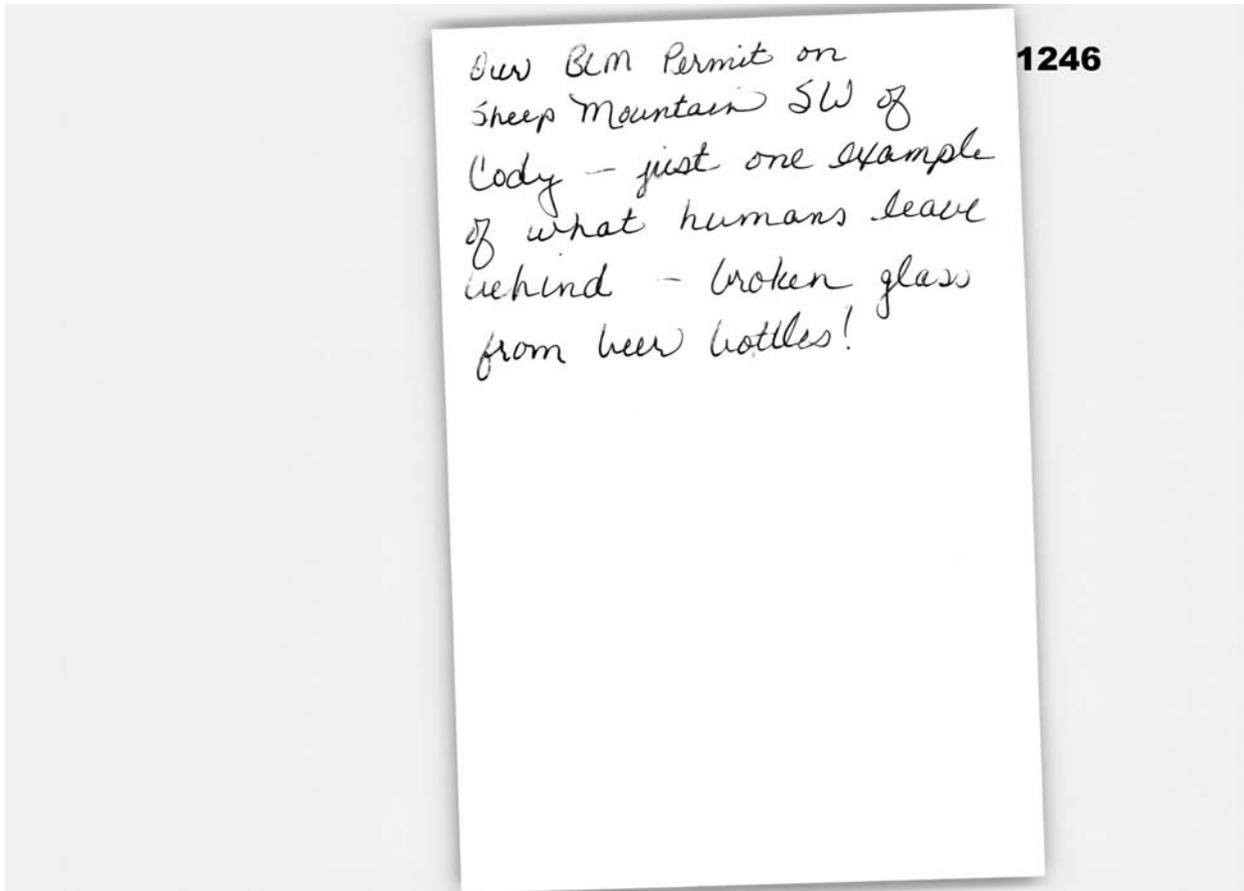
Comments must be received or postmarked by November 17, 2008

I have seen more destruction from a group of 4 whsekes in a day than cattle will do in a hundred years. But yet the cows seem to get the blame for everything

everything a cow leaves behind is biodegradable, and everything a human leaves behind is trash that doesn't decompose + their vehicle tracks disturb fragile ground that start erosion.

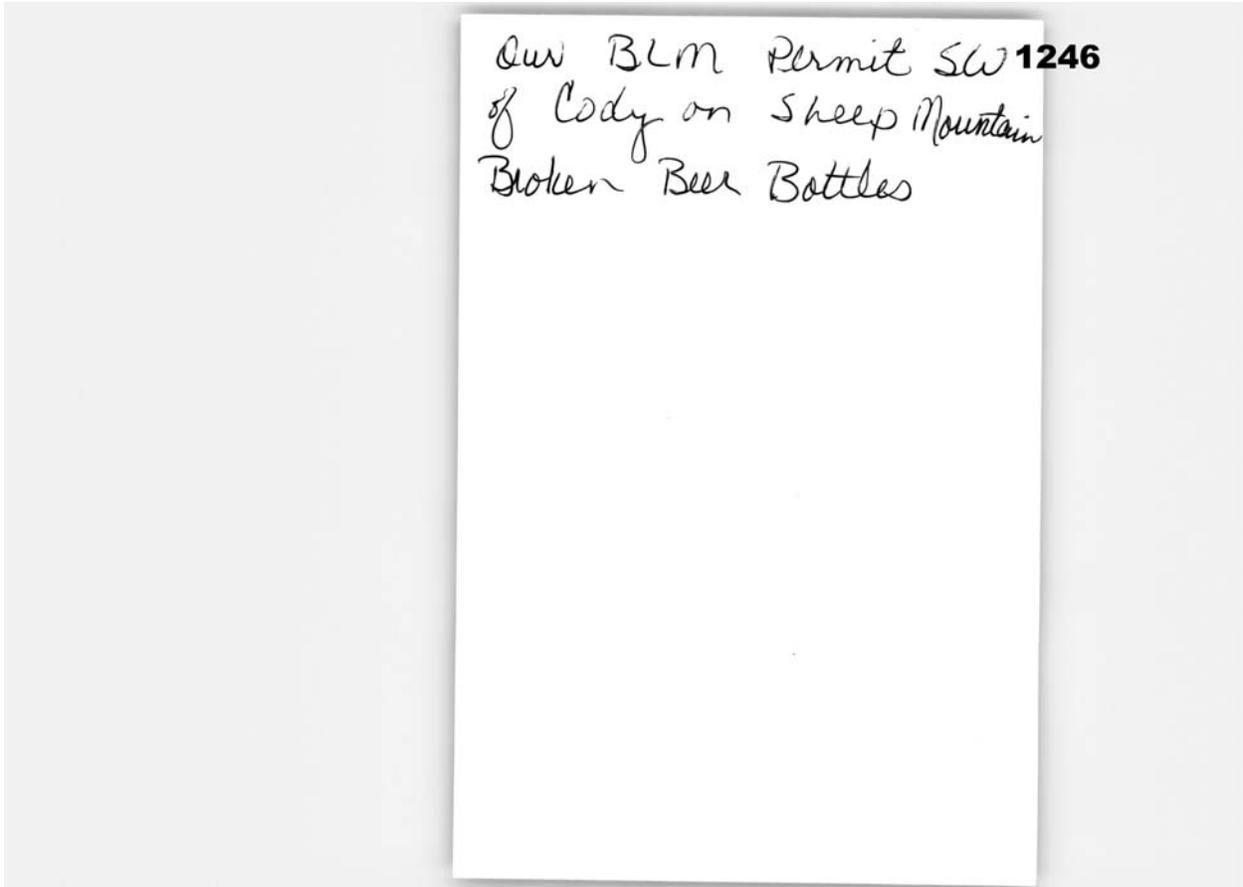


1246





1246



1247



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

**Bureau of Land Management
Bighorn Basin RMP
ATTN: Caleb Hiner
P.O. Box 119
101 South 23rd Street
Worland, WY 82401**

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov. All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, **Caleb Hiner** at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: John McGee	E-MAIL:
ORGANIZATION: individual	
ADDRESS: 1102 ALGER	
CITY/STATE/ZIP: Cody Wyo 82414	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11/15/08

- 1.) Travel Management - the dramatic increase in use and abuse of A.T.V. travel must be dealt with. There needs to be more enforcement and fines and/or deterrents to stop the off-road A.T.V. travel
- 2.) Livestock & Grazing Management - more rotation of grazing allotments - more protection of riparian areas to prevent stream bank destruction and preserve water quality and stream side storage
Concerning the wild horses, the HMA should be expanded to the original and historic land that was granted them and not in

1247

BB RMP Scoping Comment Form

Comments must be received or postmarked by November 17, 2008

competition with other livestock grazing.

3.) Energy And Minerals Management – the proposed well drilling and eventual field development by the Bill Barrett Corp. is most disturbing. As a 62 year resident of Park County, I see the McCullough Peaks as one of the last relatively undisturbed areas we have and a very fragile one at that.

I hope that you would demand the best management practices such as: a.) minimize the number of well sites and use directional drilling and small as possible pads b.) use state-of-the-art erosion control and containment techniques c.) minimize road building and totally obliterate roads whenever possible and prohibit A.T.V. use on any of these roads d.) require steep cut revegetation whenever possible and use only native seed e.) be very particular concerning wildlife and wild horse disturbances i.e. seasonal restrictions, minimal vehicular travel, protection of known prime habitat areas, development of additional water sources for wildlife and horses f.) require adequate bonding levels that will assure that reclamation will be done to a high level.

1248



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

**Bureau of Land Management
Bighorn Basin RMP
ATTN: Caleb Hiner
P.O. Box 119
101 South 23rd Street
Worland, WY 82401**

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, **Caleb Hiner** at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Charles Neustifter	E-MAIL: chuck@simpsongallaghergallery.com
ORGANIZATION:	
ADDRESS: 1013 Rumsey Ave, Worland WY	
CITY/STATE/ZIP: Cody WY 82414	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11/15/08

I see no reason to subject Big Horn Basin to oil & gas exploration and extraction. There is little long term benefit and incredibly long-term cost to water and air quality, not to mention the aesthetic beauty of our high plains desert. I am especially against any attempts to allow oil +/or gas exploration in the McCullough Peales area. From wildlife to soil to water to air — everything will suffer if you allow the leasing of these areas to oil + gas companies. Your responsibility is management — please manage our lands with an eye toward respecting the plants + animals of Big Horn Basin. It is only through responsible stewardship ~~of~~ ^{of} our natural resources ~~with~~ that we will truly benefit.

If any gas/oil development takes place on any lands, there should be an emphasis on low-impact development and a clear understanding that any company that leases these lands is responsible for returning the area to its

BB RMP Scoping Comment Form

Comments must be received or postmarked by November 17, 2008

former state before they leave. ("Pack it in, pack it out" so to speak)
Also, these companies remain responsible for any pollution or harmful effects
to the lands they lease for a period of ten years after they leave.
If any problems occur, they are responsible for clean-up. Constant
oversight + tight regulations should be in place to encourage only
the most responsible companies to lease these lands. All efforts should
be made to ~~to~~ help any oil rigs or buildings to blend in with
the landscape — from the location to the paint they use on their
structures (non-toxic). Also, if any ground water problems develop
a distance from their leased land yet if the ground water pollution
can be traced to their ~~wells~~ rigs, etc. they are responsible. No company
with a history of disrupting or polluting any other previous region, should be
allowed permits. All efforts should be made — legally — to insure
responsibly + very limited development. The BLM is our voice + is
responsible for protecting our lands and not caring is to big \$ oil.
It would be helpful if ~~new~~ alternative sources of energy
were encouraged + explored on a limited basis. Wind + solar need to
grow + develop their technologies. If we lease land to wind farms,
do so ~~with~~ responsibly.
Please keep me informed as to the progress of this plan.

November 15, 2008

Re: Comment on the Big Horn Basin Resource Management Plan Revision Project

1) I favor the practice of Multiple Use on public lands managed by the BLM in the Big Horn Basin. I believe that public lands can support a diverse range of activities without creating conflicts between these activities. Public lands can and should be used for recreational, agricultural, and energy and mineral development purposes in order to provide the greatest amount of beneficial use to the public and to the federal government.

It is realistic to assume our country's energy needs will be met in part either by development of domestic energy resources on public lands such as those in the Big Horn Basin, or by the importation of oil from foreign sources. There is no doubt that energy development on BLM lands has far less environmental impact than energy development in foreign countries where environmental rules and regulations do not exist. Energy development on lands administered by the BLM is better for the overall health of our planet.

Energy development on our public lands creates the highest paid local jobs and generates significant tax revenues to the state and to the federal government, as opposed to buying foreign oil and sending our money out of the country to unfriendly autocratic foreign governments. The amount of tax revenue generated by energy development in the Big Horn Basin is far greater than tax revenue generated by any other activity. Without mineral tax revenue other local taxes would be much higher. Residential property taxes would be increased thus reducing the amount of money residents can spend on the local economy. Taxes on recreational and agricultural businesses would also increase, which would have a negative impact on the local ranching, farming, and tourism industries. I find it ironic that local groups are spending considerable amounts of money and effort to attract new businesses and people to the Big Horn Basin, while the energy industry is already here and able to provide more higher paying jobs and can more positively impact the local economy if it were simply allowed to do so, instead of continually making it more difficult for energy development to occur.

2) The BLM should not restrict certain activities on public lands that do not damage the lands or the animals that reside thereon. Environmental and special interest groups oppose energy and mineral development of any type because they say it will destroy the land and wildlife. However I believe their objections are unfounded. For instance, there are many oil fields in the Big Horn Basin, and several giant oil fields that have been in operation for nearly 100 years, and they have not caused irreparable damage to our lands. The presence of wildlife is still evident in these fields. I do not know of any instances when elk or deer or antelope or sage grouse have been killed by a drilling rig or a tank or a road, but I do know a large number of these animals have been killed by hunters and by wolves. This would lead me to conclude that hunters and predators have a much greater negative impact on wildlife than does the drilling and operating of oil and gas wells.

It must also be realized that such energy operations will eventually come to an end. Most small and moderately sized oil and gas fields have lives of 20-50 years, while the few giant oil fields (such as Oregon Basin) may be in operation for 100 years or more. This is

1249

an insignificant amount of time considering the life of the land. All oil and gas fields will eventually be depleted, the lands which they occupy will be reclaimed and restored to their original condition, and the land and its wildlife will endure for millions of years afterwards.

3) The BLM should not create rules and regulations that allow certain special interest groups or individuals to lock-up or set aside certain public areas as their private playgrounds or for their own personal money making ventures. For example, some people say they are opposed to seeing a drilling rig or a tank or a road in the McCullough Peaks area, but they have no problem taking tourists into this area to see feral horses or to use the roads while driving their vehicles and burning fuel. Personally I believe a group of tall permanent communications towers on the top of a hill has much more visual impact than a drilling rig that is only on a location for a few weeks or a tank that is only about 20 feet high. Others like to ride their ATV's, four-wheel trucks, and hunt in such areas. If they are opposed to seeing oil or gas wells, then I am opposed to seeing their vehicles and hearing their noise and smelling their exhaust. In reality the truth is that all of these activities has occurred, and can continue to occur simultaneously without adversely impacting each other.

4) Energy development activities should not be restricted or eliminated within a 2 or 3 mile radius of a raptor nest or a sage grouse lek. It would be adequate to conduct energy development activities a reasonable distance, such as a couple of hundred yards, away from a nest or lek. There are thousands of vehicles traveling on Big Horn Basin highways every day that are much less than a mile from a nest or lek and this traffic does not cause harm to the raptors or sage grouse. While personally observing a lek during mating season I have seen other observers drive their vehicles directly into a lek and sit there with the motor running without hampering the mating activity of the sage grouse. Certainly any other mechanical activity that is 100 or 200 yards away will also not cause any negative impact.

In conclusion I wish to state that I am in favor of Multiple Use on public lands and I believe public lands can support a diverse range of activity from which our people and our government can obtain the greatest amount of beneficial use. Thank you for considering my comments.

Sincerely,



Steve Olenick
1102 Willow Lane
Cody, WY 82414

ps – I am greatly disappointed that the BLM allowed the GYC to use the Cody scoping meeting to distribute their anti-energy development propoganda. I find it difficult to believe that the BLM will objectively prepare an RMP when it shows favoritism to a special interest group that is opposed to one of the preliminary issues identified for analysis.

1250



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

**Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401**

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager,
 Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Aubrey D. Wills	E-MAIL: bandrauch@hotmail.com
ORGANIZATION: individual	
ADDRESS: P.O. Box 731	
CITY/STATE/ZIP: Basin, WY. 82410.	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 15 Nov. 2008

My Primary comments are under the Land Resources category. Livestock grazing has been and should continue to be a major consideration for the Bighorn Basin RMP. This is a valuable use of the land with definite economic benefit and with proper management has minimal environmental impact. Resources should be directed to water development for wildlife and livestock. Fencing would enable pasture rotation + wildlife protection. Large BLM allotment holders should agree to minimum wildlife standards and provide walk-in access as condition of renewal. The landowner should have authority to ask those who abuse this - to leave!

The other concern I have is regarding off-road vehicle use. The lease holder should have the right to do necessary

1250

BB RMP Scoping Comment Form

Comments must be received or postmarked by November 17, 2008

TASKS with off road vehicles. This should include 4-wheeler, Pick-ups, AND MACHINERY that is required for fencing, water development AND Live stock MANAGEMENT. Recreational off road use should be restricted to those gathering firewood, game retrieval and unusual Urgent situations.

Thirdly – I have NOT understood A clear definition of RIPARIAN AREAS. How is it defined? Does this require flowing water surrounded by vegetation? What about a seep or intermittent wet area? or is it defined mostly by the vegetation in the area? The public needs A clear AND simple definition that should be published in local newspapers.

My other concerns are Wild Horses AND NON-NATIVE Species. Wild Horses need definite herd size MANAGEMENT. Increased numbers of Horses are having definite environmental impact. They can endanger vegetation in our desert lands as well as other wild life. Wild Horses should be treated as A NON-NATIVE species!

Other NON-NATIVE species such as Russian Olive trees AND cheatgrass deserve special consideration for their control. The ultimate goal for Russian Olive trees would be their removal from BLM lands. Cheatgrass needs more long term attention and research. BLM should continue working with local Weed + Pest control agencies in regard to these plants. It should take a major leadership role with local and state agencies to control these NON-NATIVE species.

I appreciate your efforts for public comments AND if I CAN be of ANY help please call.

Sincerely

Anthony D. Wills
P.O. Box 731
Basin, Wyo. 82410
Ph. 307-272-6258

1251



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: <i>WILLIAM YOUNGER</i>	E-MAIL:
ORGANIZATION: <i>SELF</i>	
ADDRESS: <i>540 COLLEGE DR.</i>	
CITY/STATE/ZIP: <i>POWELL, WY 82435</i>	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11/15/08

EVERY ONE SHOULD HAVE THE RIGHT TO ENJOY OUR TAX PAID LAND, USE ALL OF ITS NATURAL RESOURCES WITH RESPECT TO THE LAND, AND MANAGE IT WELL FOR FUTURE GENERATIONS TO COME! NOT TO BE USED FOR ANY SPECIAL INTEREST GROUPS!

**Big Horn County, Hot Springs County
Park County, Washakie County
Issue rating for Bureau of Land Management
Bighorn Basin Resource Management Plan.**

1251
SURVEY
FORM

The purpose of this survey is to rate the importance of issues related to the 2008 Bighorn Basin Resource Management Plan (RMP). Obviously there are no right or wrong priorities. This survey will allow the counties and their contractor Ecosystem Research Group (ERG) to more efficiently focus on priority issues important to the public. It will also help us to determine how the BLM might prioritize your areas of concern in the upcoming RMP. Please rate the top ten issues from the table below that are of the most importance to you. Rate the issues based on importance using a scale of 10 to 1 (10 being the most important and 1 being least important). On the back of this form, in a couple of words, please describe problems and solutions associated with each of your 10 chosen issues. This census of priorities allows us to help determine how well the BLM has addressed your areas of concern in the latest RMP.

We will keep all contact information confidential and we ask that you include at least your name to ensure accurate polling. If you would like more time for your comments, this form can be mailed to; BBRMP Comments, c/o Meredith Holden, PO Box 8214, Missoula, MT 59807. A printable version of this survey will also be available on the web. You may access that page by visiting www.ecosystemrg.com, clicking on Project Websites and following the link under “Bighorn Basin RMP.” We would like to have your comments by November 13, 2008. If you have any questions you may contact Gregory Kennett by phone at (406) 721-9420.

Name: WILLIAM YUNGER
 Email: _____
 Address: 540 COLLEGE DR. POWELL WY. 82435

Rate the top 10 issues using a scale of 10 to 1 (10 being the most important). Again, we ask that you only rate and make comments on the 10 issues that are of the most importance to you.

Rating	Issue	Rating	Issue
	Cultural		Air quality
	Social impacts (sense of community lifestyle changes, way of life)		Working landscapes (farm and ranch) preservation
8	Wildlife habitat	9	Restoration (how aggressively should BLM restore habitat)
	Economics		Riparian areas
	Municipal services (physical infrastructure, water, sewer, etc.)	2	Roads (too many, too few, quality)
	Tourism		Threatened and Endangered Species
	Fire (risk, management, hazard, etc.)	1	Vegetation management (timber harvest etc.)
	Fisheries		Water quality and yield
	Grazing (public land)		Wilderness
3	Mining		Public process
4	Full oil and gas leasing		Social services (health care, schools, government assistance, law enforcement, etc.)
5	Some moderate level of energy development	6	Weeds
	No energy developments		Land use planning
10	Open space preservation		Aesthetics (visual quality of local landscapes)
7	Recreation (motorized, snowmobiling, OHV, etc.)		Other (please specify)
	Recreation (non motorized, fishing, backpacking, etc.)		

1252



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: <u>MARY SCHOCK</u>	E-MAIL:
ORGANIZATION:	
ADDRESS: <u>1208 RED BUTTE AVE</u>	
CITY/STATE/ZIP: <u>CODY, WY 82414</u>	

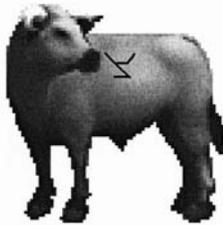
Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11-16-08

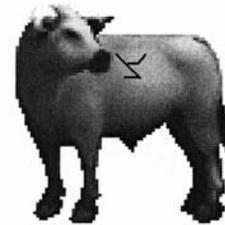
Our biological resources need to be left
as they are with grass lands available
for wildlife (all species) and the wild horses
Our future is in the hands of those who
truly care about keeping lands around
McCullough Peak + flat lands in natural
conditions. Surely the best available
technology can be used to preserve areas.
Too many areas are being invaded for residential.
Cultural + visual resources should be helped
with adaptive management - no more leasing
for gas + oil production. Preserve land we
all can enjoy in future.

1253

**PHILIP & CATHY CAINES**

P.O. Box 21
Hyattville, WY 82428
(307) 469-2279

November 17, 2008



BLM-Big Horn Basin RMP
Attn: Caleb Hiner
P.O. Box 119
Worland, WY 82401

Gentlemen:

I am providing this comment on behalf of Caines Land and Livestock Limited Partnership. Given my other responsibilities and the limited time available to gather information, my comments are general in nature. I have reviewed the 1988 Record of Decision for the Washakie Resource Management Plan.

In reviewing the previous RMP, it seems that grazing permits and mineral leasing are the first sacrifice for the benefit of other uses. No alternatives have been available for permit holders or lessees to better their positions. I think that it would be appropriate to provide some incentive for those entities for furthering the objectives of the Department where possible. For example, if a grazing permittee improves his allotment in some fashion (water, forage production, wildlife habitat), allow additional AUM's to be utilized. If an oil and gas leaseholder opts for or locates production facilities out of view, provide some financial incentive or preference on future leases. If an organization removes sand and gravel, have them leave a reservoir.

I also think it may be appropriate to establish more specific goals in the upcoming plan. While this could reduce flexibility, it may provide a target for all parties to aim for.

I believe that grazing allotments are a part of most livestock operations in the Big Horn Basin. Livestock operations contribute significantly to the economy of the Basin. Livestock should be considered part of the biological resources of the area just as fish, wildlife, and wild horses are. Livestock operations are also heritage resources of the area, both from a cultural and visual standpoint. The Big Horn Basin is steeped in the traditions of the livestock industry. A significant part of its appeal as a tourist destination is based on this tradition.

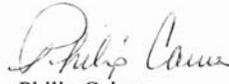
In developing the RMP, more consideration should be given to the opinions of those who have to live with the plan (grazing permittees, local residents, oil and gas leaseholders) than to the opinions of individuals and organizations remote from the area. They are the people who have to try to make a living within the constraints of the Plan as opposed to those remote individuals and organizations. It is easy for these remote individuals and organizations to write letters in support of wildlife, endangered species, and riparian areas and in opposition to grazing,

1253

mineral leasing and logging when it has no effect on their employment or home. I'm sure their opinion would change if, for example, the factory or office they work in were to be shut down because a Prebles Jumping Mouse was found in the vacant lot next door.

Finally, while the human residents of the area may not be resources of the BLM, they are the most important resource of the Big Horn Basin and should be considered as such. Thank you for the opportunity to comment.

Sincerely,


Philip Caines

1254



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Ken Coop	E-MAIL: OLEWAPITI@Prodepc.com
ORGANIZATION: RETIRED	
ADDRESS: 111 Robertson Ave	
CITY/STATE/ZIP: Worland Wyo 82401	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: Nov 17, 2008

(RMP)

Resource Mgmt Plans should set up realistic goals & objectives which allow Tiering, Coordination (ie BLM & USFS) & continuity of existing or future specific EA's.

Concerns:

A process for Accountability of mgmt concepts, ie (Stds & Guidelines) has to be established. Such a process would include a realistic budget and person power necessary to actually achieve Monitoring & Mgmt necessary to meet your Goals & Objectives.

Total ecosystem Mgmt concepts should be basis for RMP including such resources & concepts as Over

BB RMP Scoping Comment Form
Comments must be received or postmarked by November 17, 2008

Riparian Mgmt

Proper Levels of Grazing by Livestock
Coordination with Wyo Fish & Game on hunting levels
by unit.
Achievement of Proper Functioning Stream Systems

Livestock grazing & proper level actually based on
the ecosystem (in & out of Riparian Areas)

Predator Control - Careful Thought on how much or if necessary
at all -

Transportation & Energy Systems Mgmt.

Roads, where, amount, level, Power-line & wind power
Raptor Safe, ATV proper level, allow for some loops
between, State, USFS & BLM administered Lands.

Education is a key source of Accomplishment of
Goals & Objectives:

Identification & proper management of "Key" areas:
wildlife, cultural resources, Geologic, Riparian, etc.,

Thanks for opportunity to comment & be involved!

1255

Dear Persons,

I am writing in as a 53 year
Park Co. resident to encourage
the BLM to allow drilling
for gas in the McCullough
Peak. Hard times are coming
to the U.S. in part because of
a few who say don't drill,
don't cut a tree, don't scratch
the earth. We can use our
resources, and recreate in a
responsible manner for the
benefit of all Wyoming.

Thanks Glenn French

1256



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Vince Kalkowski	E-MAIL: VKChiro@hotmail.com
ORGANIZATION: Individual	
ADDRESS: 32 Diamond View	
CITY/STATE/ZIP: Cody, WY 82414	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11/17/08

I thank you for the opportunity to voice my opinions regarding future use/management of BLM land in the Big Horn Basin.

I am writing from the perspective of an avid user of BLM land. I enjoy hiking, mountain biking, shooting, walking the dogs, ~~see~~ ATVing, motorcycling etc. I am definitely a proponent of "multiple use best use." I also realize that there must be some rules and regulations regarding all useage.

I want to see the BLM basically maintain an "as is" status for the most part. I would like to see some areas of land designated as "open riding areas" for OHV's. These areas would allow off trail riding, hill climbing etc. There is land already being used this way that is out of normal sight and not suited, really, for anything else. I think that an official designation

1256

BB RMP Scoping Comment Form

Comments must be received or postmarked by November 17, 2008

and making these areas known would take some OHV use pressure off other land not suited for this designation. I would love to see more single track opportunities for motorcycle and mountain bike use. By single track, I mean cow trails, etc., not roads, ATV trails etc.

One of my biggest hopes is to develop an organized motocross community (for which there appears to be much interest for) that can present a plan for an organized, designated motocross area/facility in co-operation with BLM rules and regulations. I believe that a facility such as this would see tremendous use and would also relieve some OHV pressure on land less suited for motorcycle use.

I would like to see increased enforcement of unauthorized OHV and vehicle use by ranchers, hunters, etc. My fear being that their misconduct ends up falling into the OHV use category. The same goes for illegal dumping. I hope that this gross misconduct is never associated with OHV users.

I believe that allocating roughly 2 foot ball size field size pieces of BLM land close to each city would be helpful for the training/education of OHV users. Doing so in the appropriate way could go a long way in building a cooperative relationship between BLM + OHV users. This could lead to a decreased need for field enforcement and better overall compliance w/ BLM rules/regulations.

I would like to voice the caution of utilizing designations such as "Monument" rather than more multiple use designations such as "management area."

Overall I hope to see a posture of "management through cooperation", not "management by closure" from the BLM, and an ideal of conservation not preservation.

"Protect the land for the public, not from the public."

Thank you for this opportunity!

Sincerely

Vincent J. Kalkowski DC

**Big Horn County, Hot Springs County
Park County, Washakie County
Issue rating for Bureau of Land Management
Bighorn Basin Resource Management Plan.**

1256
SURVEY
FORM

The purpose of this survey is to rate the importance of issues related to the 2008 Bighorn Basin Resource Management Plan (RMP). Obviously there are no right or wrong priorities. This survey will allow the counties and their contractor Ecosystem Research Group (ERG) to more efficiently focus on priority issues important to the public. It will also help us to determine how the BLM might prioritize your areas of concern in the upcoming RMP. Please rate the top ten issues from the table below that are of the most importance to you. Rate the issues based on importance using a scale of 10 to 1 (10 being the most important and 1 being least important). On the back of this form, in a couple of words, please describe problems and solutions associated with each of your 10 chosen issues. This census of priorities allows us to help determine how well the BLM has addressed your areas of concern in the latest RMP.

We will keep all contact information confidential and we ask that you include at least your name to ensure accurate polling. If you would like more time for your comments, this form can be mailed to; BBRMP Comments, c/o Meredith Holden, PO Box 8214, Missoula, MT 59807. A printable version of this survey will also be available on the web. You may access that page by visiting www.ecosystemrg.com, clicking on Project Websites and following the link under "Bighorn Basin RMP." We would like to have your comments by November 13, 2008. If you have any questions you may contact Gregory Kennett by phone at (406) 721-9420.

Name: Vince Kalkowski
 Email: VKChiro@Hotmail.Com
 Address: 1408 17th St Cody Wyo 82414

Rate the top 10 issues using a scale of 10 to 1 (10 being the most important). Again, we ask that you only rate and make comments on the 10 issues that are of the most importance to you.

Rating	Issue	Rating	Issue
	Cultural		Air quality
1	Social impacts (sense of community lifestyle changes, way of life)		Working landscapes (farm and ranch) preservation
	Wildlife habitat	3	Restoration (how aggressively should BLM restore habitat)
	Economics		Riparian areas
	Municipal services (physical infrastructure, water, sewer, etc.)	6	Roads (too many, too few, quality)
	Tourism		Threatened and Endangered Species
	Fire (risk, management, hazard, etc.)		Vegetation management (timber harvest etc.)
	Fisheries		Water quality and yield
7	Grazing (public land)	2	Wilderness
	Mining		Public process
	Full oil and gas leasing		Social services (health care, schools, government assistance, law enforcement, etc.)
9	Some moderate level of energy development	5	Weeds
	No energy developments	4	Land use planning
	Open space preservation		Aesthetics (visual quality of local landscapes)
10	Recreation (motorized, snowmobiling, OHV, etc.)		Other (please specify)
8	Recreation (non motorized, fishing, backpacking, etc.)		

1257



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: J. Buster Tolman	E-MAIL:
ORGANIZATION: Bennett Creek Cattle Co.	
ADDRESS: 409 Tolman Rd, Powell, WY, 82435	
CITY/STATE/ZIP:	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: Nov. 17, 2008

The B.L.M. is doing a great job. Sometimes self criticism is good, but there is times when it goes too far. The "checker board" B.L.M. land around the Clark Area is serving not only livestock grazing but also a sort of buffer zone against over-crowding development. Therefore to change this arrangement or sell small acreages off to the public, is not good for the whole public at large.

This does not mean that there is no land that could be traded to make a solid block that would be easier to manage for the B.L.M. & the livestock producer. This option should be kept open.

I also believe that horses are the animals that are the hardest on grazing land of any animal and 4-wheelers & A.T.V.s are the hardest of machines on the land. So restrictions should stay the same as they are for horses & machines.

1257

BB RMP Scoping Comment Form
Comments must be received or postmarked by November 17, 2008

ALSO all the revenue From Grazing From an Allotment should be put back in the allotment in the form of water development, Weed control, Sagebrush control, & riparian damage control fences or structures.

ALSO need to keep the Cody B.L.A. office open and not consolidate the offices into one central location as it makes communication and traveling for the public and permittees much harder to get done.

I want the B.L.A. to know they are the exception in my response to questions of improvement or nonimprovement. I am busy seven days a week throughout the year and only write a letter of any kind about once every two years. Most all questionnaires have to go to the waste basket. I do 99% of all business over the cell phone from 6 AM to 10 P.M. - 7 days a week.

Cell no. 307-272-3600
Bennett Creek Cattle Co.
J. B. Tolman, Mgr

P.S. IT IS GOOD THAT 2 different DAYS were set for Lovell and Cody as I could not make it to Powell.

1258



Written Comment Sheet

Please submit this comment form in person or by mail on or before **NOVEMBER 17, 2008** to:

Bureau of Land Management
 Bighorn Basin RMP
 ATTN: Caleb Hiner
 P.O. Box 119
 101 South 23rd Street
 Worland, WY 82401

Electronic comments are encouraged and can be submitted at: BBRMP_WYMail@blm.gov.
 All comments must be received or postmarked by November 17, 2008. For more information contact BLM RMP Project Manager, Caleb Hiner at 307-347-5100 or via e-mail at BBRMP_WYMail@blm.gov.

NAME: Mike Williams	E-MAIL: maw-paw@tctwest.net
ORGANIZATION: Big Horn Basin Land Owner	
ADDRESS: 51 Carter View Drive	
CITY/STATE/ZIP: Cody, Wyoming 82414	

Comments submitted to BLM for use in this planning effort, including names and home addresses of individuals submitting comments, are subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 522). Written comments received during the public scoping process may be published as part of the environmental analysis process. After the close of the public scoping period, public comments submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the BLM Worland Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday (except federal holidays).

PLEASE PRINT

DATE: 11/17/08

As BLM works through the RMP process, I hope that the agency will hold the following issues in the highest regard:

- 1) Responsible energy and resource development on Public Lands
- 2) Benefits that result from responsible energy development
- 3) The recreational use of these lands must be preserved
- 4) The wildlife that depend on produced water discharge
- 5) Ecosystem enhancement through rigorous reclamation standards

I'd like for BLM to consider several aspects of the above statements as you conduct your evaluation. For each of these issues I hope that BLM will give balanced and scientifically defensible consideration to the following:

(over)

BB RMP Scoping Comment Form
 Comments must be received or postmarked by November 17, 2008

1258
 The Government and Local Economy
 can not see any of this revenue
 stream diminish due to environmental
 activists propaganda.

1) Responsible Development of BHB's abundant Resources:

- a) Tax evaluation of BHB mineral resources eclipse all other sources
- b) Give adequate breadth in leases to execute aggressive exploration, alternative energy, and enhanced oil recovery projects
- c) Consider establishing a pipeline corridor or corridors in the BHB to speed the development of resources, minimize disturbance, reduce uncertainty and prolong our economic benefits
- d) Protect the many beneficial uses of produced water that have evolved over decades of discharge
- e) Preserve access for exploration and responsible development.
- f) Support the Governor's Sage Grouse Core Area preservation plan and ban hunting. Incentivize Industry to initiate habitat restoration projects to assist with recovery.
- g) Encourage development of alternative energy sources (wind, solar, geothermal ---) and negotiate a CO₂ pipeline to the Basin to enhance tertiary oil recovery and carbon sequestration.

2) Beneficial use of produced water is essential for the viability of many ranching operations, wild life and habitat along BHB streams. The ability of Industry to discharge this good quality water is instrumental to all beneficial users and the survival of the mature oil industry.

3) While I support recreational use of Public Lands, I feel that many mis-use our lands. Four-wheelers, (ATVs, vehicles), motorcycles, and snow machines are devastating the surface of the land, creating erosion, and noise pollution. I want stricter enforcement and broad-reaching policy to reverse the damage that has been done.

4) When Industrial development (whether oil/gas or mining) encroaches on residential lands or sensitive areas the level of oversight must be heightened. I am opposed to the proposed bentonite plant in the Diamond Basin Area. This would truly be a planning disaster if approved. Certainly this would not yield significant strategic value or serve the community interest. **DO NOT APPROVE** the proposed Bentonite mine in Diamond Basin!

5) When even industrial activity is ^{immediately} planned, there must be an attendant set of actions taken to offset any action approved by the BLM. I believe this policy would serve BLM and the citizens equally.

Please invite me to all matters regarding this important issues. I appreciate the opportunity to provide input.
 Thank You,
 Mike Williams

1259

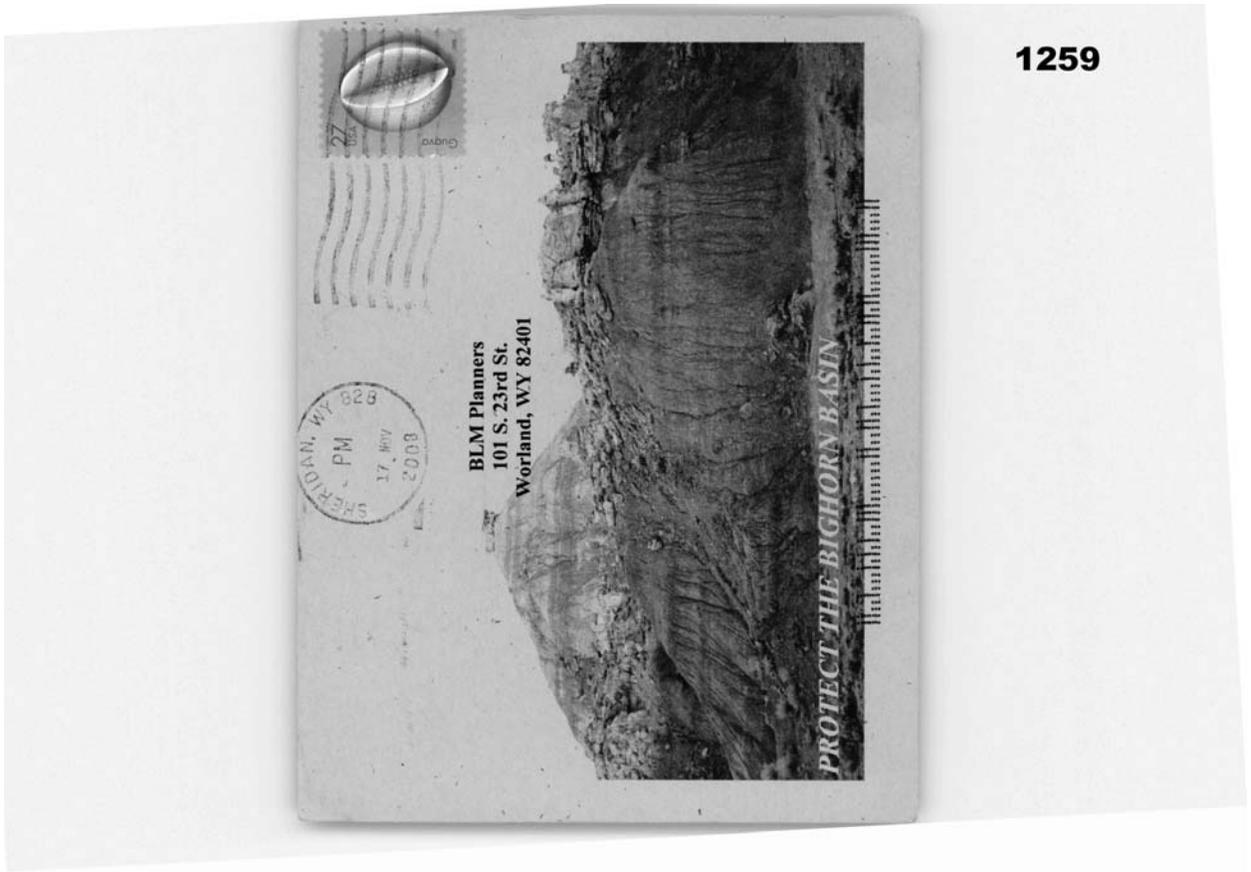
Dear BLM Planners,

The Bighorn Basin is rich in cultural and historic resources, and outstanding desert recreation opportunities. It is also home to the only sage grouse population in the state that is currently expanding, and crucial big game winter ranges for elk, bighorn sheep, mule deer and pronghorn, including some used by the Yellowstone herds. I urge you to develop a revised Resource Management Plan that will:

- Require phased leasing and development so that only a minority of the Basin can be committed to oil and gas drilling at any one time;
- Give notice when federal minerals are leased and require landowner approval of drilling and make public compositions of all drilling and frac'ing fluids used;
- Mandate minimum-footprint directional drilling for all projects to reduce impacts;
- Require "No Surface Occupancy" for oil and gas development within 3 miles of sage grouse leks and in crucial big game winter ranges and calving sites;
- Protect potential wilderness such as McCullough Peaks and Bobcat Draw;
- Minimize CBM impacts, require waste-water to be re-injected to protect aquifers; and
- Manage livestock grazing to ecologically sustainable levels.

Please print name and address

Keith Worland 121 Road 840 Clark, WY

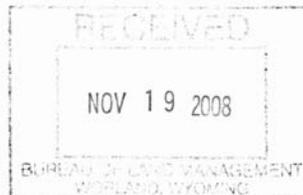


Comment Document 1260 has been intentionally removed.

1261



444 East 800 North
Logan, UT 84321
t: 435.752.2111
f: 435.753.7447



November 17, 2008

Mr. Caleb Hiner, RMP Project Lead
BLM Worland Field Office
P.O. Box 119
Worland, WY 82401-0119

Re: Scoping Comments for the Bighorn Basin RMP Revision

Dear Mr. Hiner:

The following comments are submitted on behalf of the Wyoming Outdoor Council, The Wilderness Society, and the Greater Yellowstone Coalition for consideration during the scoping process for the revision of the Bighorn Basin Resource Management Plan (RMP) and associated environmental impact statement (EIS) that were solicited by the Bureau of Land Management (BLM).

INTRODUCTION

The Federal Land Policy Management Act (FLMPA) and related BLM regulations require BLM to manage the public lands and their resources pursuant to an RMP. All future actions must conform to the terms and conditions established in the RMP. Given this overarching importance, BLM must ensure careful adherence to the legal requirements applicable to an RMP established by FLPMA, and the requirements for preparing an EIS established by the National Environmental Policy Act (NEPA). The following comments highlight many of these legal requirements and concerns we have with respect to them.

SUPPLEMENTAL COMMENTS REGARDING SPECIAL PLACES

Before turning to our comments on the legal requirements for an RMP, we would like to note that we have submitted separately comments directed at identifying areas with special resource values in the Bighorn Basin with requests that BLM seek to protect them through the RMP revision process. In many cases we ask that these areas be considered for designation as areas of critical environmental concern (ACEC). We ask that these supplemental comments be considered fully as part of our scoping comments.

Working to protect public lands and wildlife since 1967

1261

**REQUIREMENTS APPLICABLE TO AN ENVIRONMENTAL IMPACT STATEMENT
THAT BLM MUST COMPLY WITH DURING SCOPING**

The “scoping” stage of preparing an EIS requires BLM to make two determinations: (1) what is the scope of the project – in this case the RMP – to be analyzed in the EIS and (2) what are the issues that will be analyzed “in depth” in the EIS. 40 C.F.R. § 1501.7(a). See also 43 C.F.R. § 1610.4-1 (requiring scoping for RMPs to comply with Council on Environmental Quality scoping regulations). Other environmental reviews (such Biological Assessments and consultation for species listed pursuant to the Endangered Species Act) should be identified so that they can be done concurrently with the EIS and integrated with it. We believe the issues identified in these comments are within the legal scope of an RMP, and therefore they should be analyzed in depth in the EIS.

In determining the scope of the EIS, BLM must consider “connected actions,” “cumulative actions,” and “similar actions.” 40 C.F.R. § 1508.25. Connected actions are actions that are “closely related” to the RMP. Closely related actions include any reasonably foreseeable oil and gas development projects that would not occur “but for” authorization provided in the RMP. Examples of oil and gas development actions/projects that would not occur but for authorization in the RMP include leasing, exploration projects, and full-field development projects. Thus, the EIS should address each of these types of connected actions/projects in detail, and given the significant amount of historical data that exists for these types of projects they are reasonably foreseeable and a detailed consideration should be possible.

Similar actions include authorizations for oil and gas development occurring on State and private lands in or adjacent to the geographic area of the RMP, Forest Service Forest Plans and other analyses authorizing oil and gas activities on nearby lands administered by the Forest Service, and RMPs for adjacent BLM Field Offices/Districts. The plans and activities on the Wind River Indian Reservation are obviously crucial similar actions that must be considered. The scope of the EIS should include a detailed analysis of these similar actions so as to foster informed public participation in the RMP revision and informed decision-making by BLM.

Cumulative actions are actions that, incrementally, have cumulatively significant impacts, even if the individual impacts are minor. Thus, BLM should define the scope of the EIS to include analysis of the cumulative effects of actions/projects that have impacts in common with those resulting from oil and gas development. Impacts and actions that should be addressed in a cumulative fashion include, but are not limited to: road construction effects, activities leading to soil and vegetation disturbance, activities leading to changed habitat structure, activities leading to habitat fragmentation, and activities causing air or water pollution. These cumulative impacts result from a number of cumulative actions, including oil and gas development, and thus they must be addressed in a comprehensive manner. Similarly, the scope of the EIS must include consideration of direct and indirect impacts of oil and gas development activities. 40 C.F.R. § 1508.25.¹

¹ In this regard we ask BLM to consider the report “Fragmenting Our Public Lands, The Ecological Footprint From Oil And Gas Development,” The Wilderness Society (C. Weller et al., authors), September 2002.

An issue closely associated with the consideration of connected, similar, and cumulative actions and impacts is the Reasonably Foreseeable Development (RFD) scenario for oil and gas development. This issue will be addressed below in the sections on socio-economic issues and oil and gas leasing issues. Suffice it to say here that development of a realistic, well supported, economically rational, and scientifically based RFD is crucial for a proper analysis and determination of connected, related, and cumulative impacts.

Council on Environmental Quality (CEQ) regulations require a reasonable range of alternatives to be presented and analyzed in the EIS so that issues are “sharply defined” and the EIS provides “a clear basis for choice among options . . .” 40 C.F.R. § 1502.14. CEQ regulations and court decisions make clear that the discussion of alternatives is “the heart” of the NEPA process. Environmental analysis must “[r]igorously explore and objectively evaluate all reasonable alternatives.” Such objective evaluation is gravely compromised when agency officials bind themselves to a particular outcome or foreclose certain alternatives at the outset. Therefore, in the context of oil and gas development BLM must use the scoping process to develop alternatives that emphasize needed environmental protection even if such alternatives limit and/or strongly regulate oil and gas development and not dismiss such options without a thorough and careful analysis in the EIS. Elements of an alternative that achieves needed environmental protections are presented in the concluding section of these comments, and specific elements of such an alternative drawn from the revision of the RMP in the Pinedale Field Office are also presented below.

BLM must bear in mind that the “primary purpose” of an EIS is to “insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government.” 40 C.F.R. § 1502.1. The policies and goals of NEPA include,

- Encouraging a “productive and enjoyable harmony between man and his environment”,
- Promoting “efforts which will prevent or eliminate damage to the environment and biosphere”,
- Using “all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony . . .”,
- Fulfilling “the responsibilities of each generation as trustee of the environment for succeeding generations”,
- Assuring “all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings”,
- Allowing beneficial use of the environment “without degradation . . . or other undesirable or unintended consequences”,
- Preserving “important historic, cultural and natural aspects of our national heritage . . .”,
- Achieving a “balance between population and resource use . . .”, and
- Enhancing “the quality of renewable resources” and maximizing recycling of depletable resources.

42 U.S.C. §§ 4321-4331. Thus, the issues that BLM must identify for analysis in its EIS include the above goals and policies, and we ask BLM to “insure” that these considerations are “infused”

into oil and gas leasing, exploration, and development activities considered in the EIS and authorized by the RMP. These policies are further incorporated into CEQ regulations regarding the implementation of NEPA. *See, e.g.*, 40 C.F.R. §§ 1500.2(f) (Federal agencies “shall to the fullest extent possible . . . use all practicable means . . . to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment”); 1502.1 (“The primary purpose of an [EIS] is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government”).

NEPA requires BLM to make a number of considerations that we specifically urge BLM not to overlook. NEPA requires the BLM to “insure that presently unquantified environmental amenities and values” are given consideration, “recognize the worldwide and long-range character of environmental problems and thus support international efforts to prevent declines in the world environment,” and “initiate and utilize ecological information in the planning and development of resource-oriented projects.”² 42 U.S.C. § 4332, 40 C.F.R. § 1507.2. Thus, in revising this RMP, BLM should consider, analyze, and wherever appropriate facilitate, international efforts to prevent environmental decline. These include a number of international agreements and treaties for resource protection, such as United Nations biosphere reserves, migratory bird treaties, the Convention on International Trade in Endangered Species, and international efforts related to biological diversity preservation, and prevention of global warming, among others. The EIS supporting the RMP should also explicitly address unquantified environmental values and ensure they are given equal emphasis relative to economic analyses, and ensure up-to-date ecological information is utilized in developing the EIS and RMP. The “existence value” of undeveloped public lands is key in this regard, and must be given a high priority for analysis in the EIS, with applicable provisions being made in the RMP.

While the purposes and needs for the RMP are broadly defined by the FLPMA and other law, BLM should give specific attention to the purposes and needs for oil and gas related activities that will be analyzed in the EIS. BLM should address in detail what the purpose of future leasing is. It should address what the purpose of future potential exploration and development activities would be. These considerations should be made with explicit recognition of the relative value of the RMP area for meeting local, regional and national energy needs and what alternatives exist for meeting those needs locally, regionally and nationally. Alternative forms of energy such as wind power must be considered when determining the purpose and need for oil and gas development along with the relative contributions of alternatives and fossil fuels to climate change. The relative value of the area for meeting energy needs versus supplying environmental amenities/needs/values should be considered in identifying the purpose(s) and need(s) of oil and gas development. Similarly, identification of where specifically oil and gas leasing, exploration, and development is appropriate and inappropriate in the RMP area, and

² In terms of recognizing the world-wide and long range character of environmental problems, it is essential that BLM fully consider global warming in the EIS, and make provisions to reduce its impacts in the RMP. The EIS and RMP must specifically consider the impacts of carbon dioxide emissions (CO₂), but should also consider the impacts of methane (CH₄), which is an especially potent greenhouse gas, and which is released from many oil and gas development activities.

why, should be addressed in the EIS as part of the definition of the purpose and need for the RMP.

Desired outcomes or desired future conditions also are required to be considered in the EIS and RMP. BLM should determine what the desired outcome(s) from oil and gas leasing, exploration, and development activities are, particularly with reference to the desired outcome(s) for endangered species protection, prevention of habitat fragmentation, protecting the naturalness of landscapes and their aesthetic appeal, the prevention of unnecessary or undue degradation of public lands, the prevention of air and water pollution, and the protection of surface owner rights on split-estate lands. Mechanisms for resolving conflicts between the desired outcomes for oil and gas development relative to other resources should be identified in the EIS and adopted in the RMP. The requirement for BLM to prevent unnecessary or undue degradation of the public lands should be paramount in such balancing. Furthermore, some statutes, such as the Endangered Species Act, require that where there are conflicts between what is desired for oil and gas-related activities versus other resources, the objectives for oil and gas development must recede. The RMP should acknowledge this and make provisions for meeting this requirement, and similar requirements of other laws. For example, closure of lands to certain resources uses, such as oil and gas development, is specifically provided for as a means to achieve desired outcomes. Measures for protecting the land to achieve desired outcomes should be developed at an appropriate scale, with a landscape or bioregional scale being the appropriate scale for many actions, particularly endangered species protection. Development of a statement of desired outcomes will be addressed further in the concluding section of these comments.

It is rarely possible for the BLM (or any other Federal agency) to obtain perfect amounts of information. BLM must not allow this fact to stymie environmentally informed decision-making. CEQ regulations essentially establish a presumption in favor of obtaining information that is essential to reasoned decision-making. See 40 C.F.R. § 1502.22. BLM should take steps to gather needed information in all but the narrow range of exceptions permitted by the CEQ regulations. But if BLM concludes information is not essential to reasoned consideration of alternatives, or the cost of obtaining the information is exorbitant, or the means for acquiring the information are unknown, the BLM must nevertheless scrupulously abide by CEQ guidance in this regard, namely ensuring that “credible scientific evidence” be presented relative to reasonably foreseeable significant adverse impacts (including low likelihood but catastrophic impacts) so that the impacts can be assessed based on approaches that are “generally accepted in the scientific community.” See 40 C.F.R. § 1502.22(b). See also 40 C.F.R. § 1502.24 (requiring professional and scientific integrity in an EIS).

Monitoring of RMP implementation and the impacts resulting from plan implementation are crucial. A number of legal requirements apply to plan monitoring, and they should be carefully adhered to. See, e.g., 43 C.F.R. §§ 1610.4-9, 1610.5-3. Likewise, the RMP should make provision for the effective enforcement of its provisions.

THE RMP EIS MUST SET FORTH A REASONABLE RANGE OF ALTERNATIVES

As noted above, the range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. Accordingly, the NEPA requires that BLM to:

1261

- (1) present the impacts of the proposal and alternatives in comparative form, in order to sharply define the issues and provide a clear basis for choice among the options by the decision-maker and the public;
- (2) rigorously explore and objectively evaluate *all reasonable alternatives*;
- (3) devote substantial treatment to each alternative;
- (4) include reasonable alternatives not within the jurisdiction of the lead agency; and
- (5) include *appropriate mitigation measures* not already included in the proposed action or alternatives.

40 C.F.R. §§ 1502.14; 1502.14(a), (b), (c) and (f) (emphasis added).

This binding (“shall”) authority makes it imperative that BLM include, and thoroughly analyze, a conservation alternative, including the provisions set forth in these comments, in the RMP EIS. The underlying principles of the alternative are reasonable and contain appropriate mitigation measures. Therefore, BLM must devote substantial treatment to and a rigorous analysis of an alternative that seeks to conserve Wyoming’s great heritage.

Beyond the CEQ regulations, court decisions also make clear that the discussion of alternatives is “the heart” of the NEPA process and that the environmental analysis must “[r]igorously explore and objectively evaluate all reasonable alternatives.” Such objective evaluation is gravely compromised when agency officials bind themselves to a particular outcome or foreclose certain alternatives at the outset. Therefore, in the context of oil and gas development, we would like to make two specific requests. First, because ongoing leasing, during the RMP process, limits the BLM’s options to manage lands, leasing should be halted in the Bighorn Basin until the new RMP has been adopted. Considerable leasing would continue in other parts of Wyoming, not to mention the West. Second, we specifically ask that a “No New Leasing” alternative be developed and analyzed in the *draft* EIS. Such an alternative would assist in fulfilling BLM’s obligations to, during the scoping process, develop alternatives that emphasize needed environmental protection even if such alternatives limit and/or strongly regulate oil and gas development. Such options may not be dismissed without a thorough and careful analysis in the EIS. Elements of an alternative that achieves needed environmental protections are presented in the concluding section of these comments.

Alternatives embodying these elements as set forth in these comments must not be treated as straw men whose only function is to provide “extremes” against which to contrast “moderate” alternatives because all of the elements (affirmative protection of endangered species, restoration of the ecological integrity of the Nation’s waters, etc.) are legally required and have been established as the desired outcome for the public lands by Congress. To the contrary, BLM must provide full, careful, and objective consideration of alternatives embodying these elements.

Finally, throughout this analysis process, the BLM must understand and keep on the forefront of the planning, that under the FLPMA, the chosen alternative must “best” meet the needs of the American people as a whole. The FLPMA makes it explicitly appropriate that not all uses be accommodated in all areas, and requires consideration of the relative values of resources, which cannot be defined in solely economic terms. The elements of an alternative outlined in these comments are appropriate and reasonable under these standards, and thus should be fully considered in the EIS and adopted by BLM in the RMP.

With respect to development of alternatives for consideration in the EIS, we particularly ask the BLM to consider the approach and provisions of the just-revised Pinedale RMP with respect to oil and gas development. In the Pinedale RMP the BLM created three categories of land with respect to desired future oil and gas development. The three oil and gas management areas created were “intensively developed fields,” “traditional leasing areas,” and “unavailable areas.”

We ask the BLM to consider a similar approach in the Bighorn Basin RMP. The reason this approach is desirable is that it creates a “vision” for what future oil and gas development should look like. It creates an overall framework for future development. This approach stands in contrast to the approach used in the recently revised Rawlins and Kemmerer RMPs where no “vision” is presented, rather oil and gas development and leasing provisions are widely varying and disconnected from any overarching goals or framework. There is no vision, just many disconnected provisions in these plans. That should be avoided in the Bighorn Basin RMP. This should not be replicated in the Bighorn Basin RMP. We believe that if the three categories adopted in Pinedale are adopted in the Bighorn Basin, there would be a greater likelihood that large areas would be deemed unavailable for future leasing, which is consistent with the recommendations in these comments.

We specifically ask the BLM to adopt the following provision from the Pinedale RMP that applies to unavailable areas. The Pinedale RMP provides that in unavailable areas that “[m]anagement actions on existing leases within the Unavailable Areas would be designed to protect important habitats by excluding surface occupancy and/or disturbance to the extent this restriction does not violate the leaseholder’s/operator’s lease rights” with respect to greater sage-grouse, big game, and sensitive species conservation. Proposed Resource Management Plan and Final Environmental Impact Statement for the Pinedale Field Office at 2-140, 2-142, and 2-144. This is an important means to ensure that in areas that BLM does not allow future leasing that the area is not harmed by development of existing leases, and thus it should be replicated in the Bighorn Basin RMP.

REQUIRE ONGOING AND CONSISTENT MONITORING

Monitoring of RMP implementation and the impacts resulting from plan implementation are crucial. A number of legal requirements apply to plan monitoring, and they should be carefully adhered to. See, e.g., 43 C.F.R. §§ 1610.4-9, 1610.5-3. Likewise, the RMP should make provision for the effective enforcement of its provisions. It is worth noting that the standards and requirements developed in an RMP are mandatory and must be implemented, and not just when site-specific projects are pursued. In view of these provisions the RMP EIS must

1261

include precise plans to monitor resources for the life of this RMP as well as plans to ensure that the monitoring is completed in a timely and thorough fashion. In short, if monitoring is not happening, development should not proceed.

“IN MANAGING THE PUBLIC LANDS THE SECRETARY SHALL BY REGULATION OR OTHERWISE TAKE ANY ACTION NECESSARY TO PREVENT UNNECESSARY OR UNDUE DEGRADATION OF THE LANDS.”

This provision from the FLPMA is a mandatory requirement applicable to all resource uses and decisions affecting BLM lands. 43 U.S.C. § 1732(b). Consequently, it must serve as a bedrock for all analyses in the EIS, and activities undertaken pursuant to the RMP. It is crucial to recognize that unnecessary or undue degradation must be prevented; the RMP must provide that both prongs of this standard are met. Clearly, the BLM bears a heavy responsibility before it can authorize activities that may degrade the public lands.

We urge BLM not to define “unnecessary or undue degradation” by default, in a negative fashion. In the context of oil and gas development, we specifically recommend that BLM reject the position that because regulations provide that an oil and gas lease conveys the right to “use so much of the leased lands as is necessary to explore for, drill for . . . and dispose of all of the leased resource . . .” essentially anything an oil and gas lessee proposes to do to develop a lease is “necessary” or “due” and therefore any resulting degradation of the public lands is not “unnecessary” or “undue.” See 43 C.F.R. § 3101.1-2.

Instead, we urge BLM to require, in a direct and positive fashion, that oil and gas development not cause unnecessary or undue degradation, and to ensure that this is the case. The confusing, circuitous approach of defining unnecessary or undue degradation in a backwards way (if something is deemed necessary by default, so the goes, it cannot be unnecessary) can lead to a failure to require directional and horizontal drilling technologies, which may not be a lessee’s first choice, but which will still allow development of a leasehold but with far less degradation of the public lands, which is what BLM must concern itself with. Given the direct, unambiguous command from Congress to do whatever is necessary to prevent unnecessary or undue degradation, the RMP should define, and prevent, unnecessary or undue degradation in an equally direct, positive fashion.

This view of the proper interpretation of the “UUD” clause is supported by the court’s decision in Mineral Policy Center v. Norton, 292 F.Supp.2d 30 (D.D.C 2003), which in no way countenanced a negative definition of unnecessary or undue degradation arrived at by default, but rather recognized it as a direct command from Congress to prevent such degradation. Nor did the court permit BLM to adopt a unitary view of the UUD clause: it creates two distinct mandatory obligations. The court determined unequivocally that the requirement to prevent unnecessary or undue degradation imposes dual requirements on BLM; it must prevent both unnecessary degradation as well as undue degradation. 292 F.Supp.2d at 42. Addressing this dual requirement, the court made plain that “Congress’s intent was clear: Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary to mining, is undue or excessive.” Id. That is, while unnecessary degradation may only prevent activities that are not generally recognized or used to pursue mining operations, the undue degradation prohibition

establishes a further requirement to prevent activities that would unduly harm or degrade the public lands. As stated by the court, “FLPMA, by its plain terms, vests the Secretary of the Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land.” Id. BLM should address and define the UUD clause in the RMP and the EIS in a manner consistent with the Mineral Policy Center court’s views.

BLM MUST ENSURE COMPLIANCE WITH THE LAND USE PLANNING REQUIREMENTS OF FLPMA

Under FLPMA, land use plans for public lands are to “use and observe” multiple use and sustained yield principles, give priority to designation and protection of areas of critical environmental concern, and provide for compliance with pollution control laws, among other things. 43 U.S.C. § 1712(c). See also 43 U.S.C. §1711(a). Likewise, specific management actions must be done pursuant to multiple use and sustained yield principles. 43 U.S.C. § 1732(a). These requirements must be borne in mind as the RMP is developed.

The Requirement To Manage For Multiple Use And Sustained Yield Has Substantive Components That Must Be Adhered To.

The definition of multiple use in FLPMA is long, but key provisions include the following: (1) Public lands and their resource values must be managed so that they “best meet the present and future needs of the American people;” (2) It is appropriate that some land be used “for less than all of the resources;” and (3) There must be harmonious and coordinated resource management that is done “without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or greatest unit output.” 43 U.S.C. § 1702(c). Sustained yield as defined in FLPMA can be achieved either by “high-level annual” or “regular periodic” output of resources, so long as this is accomplished in a way that can be maintained in perpetuity and is consistent with the definition of multiple use. 43 U.S.C. §1702(h). These definitions give substance to the requirement that land use plans and resulting management actions are to use and observe multiple use and sustained yield principles.

The purpose of this planning process must be to produce a plan that “best” meets the present and future needs of the American people. The RMP cannot adequately meet these needs, or generally meet these needs, or largely meet these needs, it must “best” meet them. FLPMA explicitly requires that what is “best” must be viewed from the perspective of the present and the future and all alternatives, including the proposed action, must be designed to satisfy this requirement. We would note that FLPMA specifically requires that in the development of a land use plan the BLM must “weigh long-term benefits to the public against short-term benefits.” 43 U.S.C. § 1712(c)(7). What is best now may not meet future needs, and since future needs may be unknown in some respects, the only way to “best” insure that future needs are met is to develop and select alternatives that have a large built in margin of safety. To achieve a large built in margin of safety the plan should emphasize resource and ecosystem protection, which will best ensure that future options are retained. Furthermore, what is “best” must be determined

1261

with reference to the needs of the American people as a whole, not a small subset of the American people.

FLPMA explicitly provides that the alternative plans that are developed need not accommodate all resource uses on all lands. This provision has special significance relative to oil and gas leasing, exploration, and development because too often essentially all lands are made available by BLM for oil and gas extraction. Therefore, we request that the alternatives developed for consideration in the EIS include a wide range of options relative to allocating lands in this area to oil and gas extraction activities. BLM must fully consider placing areas off limits to oil and gas leasing, subjecting areas open to leasing to No Surface Occupancy (NSO) stipulations, as well as making areas available for leasing subject to appropriate timing and controlled surface use stipulations. Moreover, FLPMA provides that areas where less than all resource uses are allowed should be “large enough to provide sufficient latitude for periodic adjustments” to accommodate changing circumstances. 43 U.S.C. §1702(c).

It is also important to emphasize that under FLPMA the alternatives that are developed must consider the relative value of the resources involved. By this legally required measure, rare, unique, and sensitive native species have a relative value far in excess of more common or easily replaced public land resources, or resources that can be provided from other lands. The same is true of many other resources, such as cultural, historical, paleontological, and wilderness resources. Accordingly, the alternative plans that are developed, and particularly the preferred alternative, must give special emphasis to protecting and providing for relatively rare resources.

Since sustained yield can be achieved by providing for regular periodic outputs of renewable resources, we ask that BLM consider this measure of sustained yield rather than just high-level annual measures. Occasional (periodic) outputs of some resources may be a far more sustainable means to manage for multiple use in perpetuity than to attempt to produce the resource annually, especially at a “high-level.” For example, drought could well make livestock grazing ill-advised and unsustainable in some years if other resource values such as wildlife are to be protected and maintained.

In addition to the requirement to manage for multiple use and sustained yield, Congress declared a policy in FLPMA that public lands are to be “managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values” as well as to “preserve and protect certain public lands in their natural condition” and provide “food and habitat for fish and wildlife.” 43 U.S.C. §1701(a)(8) (emphasis added). Consequently, Congress has made clear that strong environmental protection must be provided through the planning process for these public assets. The EIS should reflect this Congressional guidance in all alternatives that are developed and considered, especially in the plan that is finally selected.

Designation Of Areas Of Critical Environmental Concern Must Be Given Priority.

Areas of Critical Environmental Concern (ACECs) are defined in FLPMA. Just as the definitions of multiple use and sustained yield gives substance to FLPMA’s requirements for management to be based on multiple use and sustained yield, the definition of ACEC gives

substance to the requirement that priority be given to designation and protection of ACECs. ACECs are defined as areas “where special management attention is required . . . to protect and prevent irreparable damage” to important resources, including fish and wildlife resources, ecological features, and historical, paleontological and archeological resources. 43 U.S.C. §1702(a). Candidate ACECs must have relevance and importance. 43 C.F.R. § 1610.7-2(a).

Under FLPMA, the BLM must “give priority to the designation and protection of areas of critical environmental concern” when it prepares a land use plan. 43 U.S.C. § 1712(c)(3). We believe the BLM must faithfully ensure compliance with this command. It must give priority to designating ACECs; it cannot just “consider” them or “analyze” them, it must designate them as a priority. That is what FLPMA requires. We would note that no other obligation for planning under FLPMA states that priority must be given to that provision, but the designation of ACECs requires that level of emphasis. See 43 U.S.C. 1712(c)(1)-(9). Designation of ACECs was singled out for priority by Congress. And in our view “priority” means what it means: “[p]recedence, especially established in order of importance or urgency.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1395 (4th ed. 2000). As the Supreme Court has stated, “[i]t is, of course, a basic canon of statutory construction that we will not interpret a congressional statute in such a manner as to effectively nullify an entire section. Duncan v. Walker, 533 U.S., 167, 174 (2001) (“[A] statute ought, upon the whole, be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” (citation omitted)). See also Dodd v. U.S., 545 U.S. 353, 370 (2005) (same). Thus, the BLM should ensure it gives “priority” to “designating” ACECs in the Bighorn Basin RMP revision.

We ask that BLM consider designating ACECs for all species that have been listed pursuant to the Endangered Species Act or recognized as sensitive species by BLM. The rarity and/or uniqueness of these species means they are “relevant” and “important” by definition. The fact that they are rare also shows “special management attention” is needed; or, in the case of inherently rare species, that special management is needed to protect what is often very limited habitat. Furthermore, in our view the loss of species through extinction or the continued decline of species (especially already-rare species) constitutes “irreparable damage” in both ecological and quality-of-life terms. Therefore, these species warrant improved protection through ACEC designations.

It is also worth noting that the Endangered Species Act (ESA) establishes requirements that can be achieved—and are required to be achieved—by ACEC designation. There is, of course, the well known jeopardy standard in section 7(a)(2) of the ESA that prohibits agencies from jeopardizing the continued existence of listed species or taking actions that result in the destruction of adverse modifications of critical habitat. 16 U.S.C. §1536(a)(2). Designating ACECs is an obvious means of ensuring this duty is met, and is especially relevant given the priority Congress attached to designating ACECs during land use planning.

But perhaps more importantly, section 7(a)(1) of the ESA requires all Federal agencies to “utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation” of listed species. 16 U.S.C. §1536(a)(1) (emphasis added). This is a mandatory duty. Given the priority that Congress attached to designating ACECs, and its commandment that all agencies carry out programs to conserve listed species, it is apparent

1261

ACEC designation is precisely the kind of program Congress intended be used to further the conservation of listed species. In this regard, we feel the BLM should especially give consideration to designating ACECs along the “Beartooth/Absoraka Front” stretching from the Montana border down to roughly Thermopolis. A wide range of listed species use this area, including gray wolves and grizzly bears.

Additionally, since agencies must further the purposes of the ESA by carrying out conservation programs, its worth noting that one purpose of the ESA is to “provide a means whereby the ecosystems upon which [listed] species depend may be conserved.” 16 U.S.C. §1531(b). ACECs are clearly a flexible means to protect the ecosystems on which listed species depend, and thus they provide a convenient programmatic means to further the purposes of the ESA that BLM is required to fully utilize and implement. Given the priority for endangered species protection established by Congress, and the priority given to ACEC designation in FLPMA, ACECs should be used liberally to protect rare species in the RMP area. The same obligations also attach relative to candidate and BLM sensitive species pursuant to BLM’s Special Status Species Management Manual. BLM Manual Section 6840.

Furthermore, we request that all riparian areas in the geographic area of the RMP be designated ACECs. The ecological value of these areas is universally acknowledged. It is also widely recognized that most riparian areas in the west are in a non-functioning or functioning at risk status. Thus, special management is needed. Riparian areas are discrete and easily recognized, generally speaking. Consequently, they would be relatively easy to delineate for special management. In the aggregate they have far more than local importance. Additional needs for riparian area management will be discussed below. Reflecting the overarching importance of riparian areas, the BLM Manual specifically provides that important riparian-wetlands areas should be considered for designation as ACECs.

In addition to riparian areas, other areas that should be considered for ACEC designation are: big game wintering areas, migration and other ecological corridors, and areas with special breeding, feeding or sheltering value for wildlife, such as cliff areas used by raptors, prairie dog colonies, and caves. Areas of large, contiguous habitat, should also be considered for ACEC designation. Archeological, historical, and paleontological sites and resources should be protected through the use of ACEC designations, as required by FLPMA.

Relative to ACECs, the RMP “shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC[s].” 43 C.F.R. § 1610.7-2(b). In our view, this requires the following. First, given the purpose of ACECs the requirement to “prevent irreparable damage” establishes a greater protective standard than either the nonimpairment standard in the definition of multiple-use or the prevention of unnecessary or undue degradation standard applicable to all actions. Compare 43 U.S.C. § 1702(a) with 43 U.S.C. §§ 1702(c), 1732(b). Second, wherever, an ACEC is designated, BLM should consider withdrawing the areas from operation of the mining and mineral leasing laws pursuant to 43 U.S.C. § 1714 so as to ensure there is no irreparable damage. Third, where a potential ACEC has only been identified, BLM must nevertheless “take all feasible action to assure that those qualities that make the resource important are not damaged or otherwise subjected to adverse change pending an ACEC designation decision.” 45 Fed. Reg. 57318, 57326 (Aug. 27, 1980).

BLM Must Provide For Compliance With The Clean Water Act And Clean Air Act.*The Clean Water Act.*

The FLPMA establishes a general requirement that land use planning and the resulting plan “provide for compliance” with “pollution control laws.” 43 U.S.C. § 1712(c)(8). Compliance with the Clean Water Act (CWA) is an important element of this requirement.

The CWA establishes many requirements that BLM must adhere to in the RMP. It is imperative that BLM insure that waters on its lands comply with State water quality standards. It is critical to recognize that State water quality standards “serve the purposes” of the CWA, which, among other things, are to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. . .” 33 U.S.C. §§ 1313(c)(2)(A), §1251(a). That is, a purpose of water quality standards is to protect aquatic ecosystems, and BLM must ensure this comprehensive objective is met by ensuring water quality standards are complied with. Water quality standards are typically composed of numeric standards, narrative standards, designated uses, and an antidegradation policy. Sometimes, however, only numeric standards are viewed as “water quality standards.” That narrow view is incorrect. The Supreme Court held in PUD No. 1 of Jefferson County v. Washington Dep’t of Ecology, 511 U.S. 700 (1994), that all components of water quality standards are enforceable limits. Consequently, the RMP must ensure all components of State water quality standards are met, not just numeric standards.

Adopting this legally sanctioned view of water quality standards is important. For example, a typical designated use for a stream might state that the stream is protected for cold water species of game fish and other cold water aquatic life, including necessary organisms in their food chain. Designated uses of this sort encompass a far more holistic, ecosystem-based view than focusing on, say, the concentration of chloride in the stream (a numeric standard). Consequently, the RMP should provide that designated uses be fully achieved, and if they are not, require prompt management changes even if numeric standards are otherwise being met. Similarly, narrative standards can often embody a better ecological synthesis than numeric standards, and thus BLM should ensure that they too are achieved. For example, the State’s narrative standard might make it illegal to contaminate a stream with floating materials or scum that create objectionable odors or cause undesirable aquatic plant growth. If the State water quality standards applicable to the RMP area have made narrative provisions a component of water quality standards, the RMP should ensure these narrative standards are fully met, and modify management where they are not.

The State’s antidegradation policy is also a critical component of water quality standards. See 40 C.F.R. § 131.12 and applicable State regulations. Of particular significance are Outstanding National Resource waters, where water quality must be maintained and protected. 40 C.F.R. §131.12(a)(3). Outstanding National Resource waters are waters that “constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance . . .” Id. (emphasis added).

In addition to the antidegradation policy’s protections for waters that are meeting water quality standards, where State water quality standards have not been achieved despite

1261

implementation of point source pollution controls, section 303(d) of the CWA requires a State to develop a list of those still-impaired waters, with a priority ranking, and to set total maximum daily loads (TMDLs) of pollutants for the stream "at a level necessary to implement the applicable water quality standards. . . ." 33 U.S.C. §1313(d)(1)(C). Consequently, to the extent waters within the BLM's jurisdiction have been identified as water quality impaired segments, or contribute stream flow to such segments, the RMP should include affirmative steps toward reducing that impaired status, regardless of whether the State has made a specific allocation of pollutant load to BLM lands at the time the RMP is prepared. If any specific load allocation has been made by the State for activities on BLM lands, BLM should obviously ensure that these are complied with.

The RMP should ensure full compliance with sections 401 and 404 of the CWA. Section 401 requires State certification of compliance with State water quality standards prior to authorization of certain actions on BLM lands. 33 U.S.C. § 1341. The RMP should fully implement this requirement. Section 404 requires permits before discharges of dredged or fill material can be made into navigable waters, and BLM, through the RMP, should assist the EPA and Army Corps of Engineers with implementation and enforcement of this requirement, which, of course, is a powerful means for the protection of wetlands. See 33 U.S.C. § 1344.

Additional Clean Water Act Issues.

As noted above, Wyoming's water quality standards and pollution discharge permits serve the purposes of the CWA which are, among other things, to "restore and maintain the chemical, physical and biological integrity of the Nation's waters...." 33 U.S.C. 1313(c)(2)(A). Thus, it is imperative that the BLM act to ensure the protection of aquatic ecosystems within the Bighorn Basin, since that is the overall purpose of the CWA. This means that the BLM must be aware of water quality standards requirements and permit requirements for federal BLM lands and should be actively involved with ensuring that all activities and practices on federal lands are in compliance with the CWA. This is true for standards as well as permit requirements.

In Wyoming, for instance, most streams are Class 2AB streams that support cold water fisheries. It is possible that many of the streams in the Bighorn Basin may have problems complying with this standard due to the (often) hot water that is discharged by oil and gas operations into the creeks and rivers of the basin, causing temperature anomalies. Examples include Oregon Basin and Little Buffalo Basin. Please find attached as Exhibit A an example of a hot discharge occurring in Little Buffalo Basin (owned by Citation Oil Company). **Note:** Exhibits A-H referenced in this section of these comments are being submitted under separate cover by Mr. Steve Jones, the Wyoming Outdoor Council's watershed protection attorney.

The RMP should provide that designated uses for these streams, including Class 2AB streams, be fully achieved. If they are not being achieved, management changes, including best management practices, should be required so that numeric and narrative standards as well as designated uses are met. Similarly, discharge permit requirements should be met, and the BLM should require best management practices on the part of all dischargers on federal BLM lands or for federal mineral leases, in order to insure that effluent limits are in compliance at the end of the pipe.

The BLM should address anti-degradation policies in its RMP. Chapter 1 of the Wyoming Water Quality Rules and Regulations, Section 8, sets forth anti-degradation requirements. The BLM should do what it can to ensure that Wyoming's waters within the Bighorn Basin will not be degraded, especially for those streams whose quality is above the standards. To that end, the BLM should evaluate waters within the basin for aquatic integrity, as well as waters that have exceptional recreational or ecological significance, that may be appropriate for designation as Outstanding National Resource waters. Waters that may be appropriate for consideration as Outstanding National Resource waters may include the North and South Forks of the Shoshone River, the Bighorn River, the Greybull River, the Nowood River, Dry Creek, Paint Rock Creek, Shell Creek and Tensleep Creek.

Drainages that may be appropriate to consider as areas of high aquatic integrity have been identified by American Wildlands in their report on the Upper Yellowstone River basin, which can be found at http://wildlands.org/sites/wildlands.org/files/research_reports/gis_aia.html. The report is also being sent along with these comments as Exhibit B. A map of the Big Horn Basin showing Aquatic Integrity Areas for the Bighorn Basin is attached as Exhibit C.

Much of the Bighorn basin has been suffering from benign neglect. In an area which only experiences 6 inches of rain per year, any additional water is often appreciated. Regulatory agencies have had a tendency to look the other way when considering the quality of the water being put out onto the landscape, perhaps feeling that "wetter is better." But when that water is seriously polluted, and results in significant alteration of the ecology and aquatic integrity of a stream or watershed, such pollution cannot be considered benign and is not good for the environment of the basin in the long term.

Submitted as attachments are photographs that document our concerns about the level of attention -- or lack thereof -- that some areas of the Big Horn basin have been receiving. See Exhibits E, F, G, and H.

Reduce Impaired Waters

Some important segments of the Bighorn River have been identified as impaired by the Wyoming Department of Environmental Quality. The BLM should take steps to reduce the number of impaired waters in the Bighorn basin. To the extent waters within the Big Horn basin and within BLM's jurisdiction have been identified as impaired streams or lakes, or where stream flows from BLM lands contribute to the impairment of those listed stream or river segments, the RMP should include affirmative steps to be taken to reduce those impairments, regardless of whether the State of Wyoming has made an assessment as to the allocation of pollution loads caused by or coming from BLM lands. The BLM should work with the State, on a proactive basis, in the preparation of the RMP, to identify appropriate actions that need to be taken to reduce the total maximum daily load (TMDL) of any impaired stream.

As of now, the Bighorn River and the Greybull River are impaired for *e. coli* pollution. The BLM should evaluate whether its authorized grazing practices, upstream, are causing or contributing to this pollution.

1261

Comply with the Clean Water Action Plan

The Clean Water Action Plan requires that natural resources be managed on a watershed basis. See <http://www.cleanwater.gov/action.c2b.html>. Federal agencies such as the BLM are required to adopt a policy that "will ensure a watershed approach to federal land and resource management that emphasizes assessing the function and condition of watersheds, incorporating watershed goals in planning, enhancing pollution prevention, monitoring and restoring watersheds, recognizing waters of exceptional value, and expanding collaboration with other agencies, states, tribes and communities." *Id.* The BLM is specifically required to provide for "enhanced watershed restoration efforts including the integration of watershed restoration as a key part of land management planning and program strategies," among other requirements. With regard to roads, for instance, the BLM should "increase maintenance of roads and trails and aggressively relocate problem roads and trails to better locations. Where unneeded roads pose threats to water quality they will be obliterated and the land restored." *Id.* Implicit in this requirement is a prohibition on creating or permitting additional roads that could become problem roads especially where there is no realistic basis given budget and personnel constraints to believe they can be adequately maintained. This requirement is especially important in the Bighorn Basin where oil and gas activities abound, since they are typically characterized by a profusion of roads. Those roads should not be allowed to degrade streams or riparian zones, and the RMP should reflect a careful approach to avoiding such damage or degradation. The Clean Water Action Plan requires that BLM "will enhance the quality of streams and riparian zones and accelerate restoration." *Id.*

Furthermore, the RMP should make provision for implementing BLM's Riparian - Wetland Initiative, and seek to implement the specific objectives established in that initiative, particularly the objective of restoring 75% of riparian areas to "proper functioning condition." This is a matter of particular concern within the Bighorn Basin since many wetlands are man-made, and are there as a result of oil treater discharges from oil and gas operations on BLM lands. While wetlands may be established downstream of such discharges, the water is often laden with salts that make the wetland created by such discharges less than "properly functioning." The plants supported under such circumstances are often more salt tolerant, often non-native, and can out-compete the natural grasses and vegetation for this reason. In the long run, these are not sustainable wetlands, since the salty discharges from the oil treaters will eventually run their course as the resource dries up, and the watershed will be left with an excess of salt and dried up wetlands that are no longer functioning at all.

The Clean Air Act.

The RMP must manage actions on public lands to meet the air quality standards prescribed by Federal, State, and local laws. Meeting the requirements of applicable State implementation plans and ambient air quality standards is a must. Protecting air quality should be a priority. The FLPMA requires BLM to consider the relative value of the various resources, and indeed clean air is quickly becoming (along with undeveloped landscapes) a most valued, yet dwindling resource. Therefore, BLM should take a proactive approach to managing air quality by, among other things: gathering baseline air quality data; setting and/or implementing (or at least assisting to implement) aggressive standards; requiring any actions on public lands to

meet those standards (i.e. no flaring, no two-stroke engine use on public lands, etc); analyzing the cumulative impact of any proposed action with other past, present, and reasonably foreseeable actions; establishing an effective monitoring program; and halting any actions that contribute to air pollution if such monitoring reveals that standards have been exceeded.

The EIS should address the issue of regional haze and the destruction of viewsheds caused by haze, particularly in Class I areas. Both the North Absoraka and Washakie Wilderness Areas are Class I areas, as is the Teton Wilderness. The BLM has special obligations to protect visibility and other air quality related values in Class I areas, and it should ensure the EIS addresses this issue and that the RMP makes provision for the protection of these values.

Oil and gas development activities directly contribute to air pollution in several ways, and all should be addressed in the RMP EIS. Oil and gas development activities produce large surface disturbances (pads and roads) and increase vehicle traffic, which contributes to particulate pollution. Oil and gas development activities also contribute to NO_x, SO₂, and volatile organic compound (VOCs) pollution, through activities like flaring, drilling, processing plants, and wellhead compressors and compressor stations, to name a few. EISs in the Pinedale area, including the Jonah Infill EIS and the Pinedale Anticline Supplemental EIS, as well as the Moxa Arch EIS in the Kemmerer Field Office, are increasingly showing substantial impacts on visibility in Class I areas due to oil and gas development. They are also showing that the permissible increment consumption in Prevention of Significant Deterioration Class II areas is being fully consumed, a violation of the Clean Air Act. While air quality in the Bighorn Basin may still generally be very good, as shown in the Pinedale area this can quickly change if there is significant oil and gas development, so the Bighorn Basin EIS and RMP should fully address and seek to prevent these problems.

Perhaps most significantly, issues related to ozone pollution must be addressed. This type of air pollution has become all too apparent in the Pinedale area and it has caused a furor. The BLM should assure this is not replicated in the Bighorn Basin. And given the newly reduced National Ambient Air Quality Standard (NAAQS) for ozone (it has been reduced to 75 parts per billion), many areas are increasingly close to violating this new national standard.

As indicated, air pollution problems, perhaps more than any other environmental problem, are not subject to human-created, artificial boundaries. Consequently, the EIS must consider air pollution problems existing in the RMP area (whatever their source) at appropriately broad scales.

The BLM has uniformly insisted in pursuing only “qualitative” air quality analyses in other RMP revisions it has done in Wyoming. We urge the BLM to reject this approach to revising the Bighorn Basin RMP and to instead provide a “quantitative” analysis (i.e., use dispersion modeling).

A qualitative “analysis” is insufficient to meet the requirements of NEPA. An EIS must consider the environmental impacts of a federal action; it must consider the effects of the action. A consideration of the environmental effects of an action requires a consideration of both the direct and indirect effects. 40 C.F.R. § 1508.8. A qualitative analysis does not meet these

1261

requirements because it is little more than an inventory of the likely increases in pollutants. An EIS must provide a “detailed statement” on the “environmental impact of the proposed action” or the “adverse environmental effects which cannot be avoided should the proposal be implemented” that NEPA requires. 42 U.S.C. §§ 4332(2)(C)(i)-(ii). A simple inventory does not meet these requirements because it provides no concrete conclusions whatsoever regarding potential impacts of the emissions. This is a violation of NEPA. The BLM is required to “consider every significant aspect of the environmental impact of a proposed action.” Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 98 S.Ct. 1197, 1216 (1978). Only the use of quantitative dispersion models such as CALPUFF will allow for this level of required analysis. We would note that EPA may be adopting policy regarding this issue and the BLM should remain attune to those developments.

The FLPMA Requires A Land Use Plan to Consider the Relative Scarcity of Values and to Realize those Values.

Under FLPMA, land use plans shall “consider the relative scarcity of values involved and the availability of alternative means (including recycling) and sites for realization of those values.” 43 U.S.C. § 1712(c)(6). It is important to note that the plan must seek the “realization” of these relatively scarce values. Consequently the Bighorn Basin RMP must ensure that relatively scarce values are realized by providing alternative means and sites for protecting them.

THE ENVIRONMENTAL IMPACT STATEMENT MUST ADDRESS THE FULL RANGE OF RESOURCE ISSUES AND THE RESOURCE MANAGEMENT PLAN MUST ADOPT NEEDED PROTECTIONS FOR THOSE RESOURCES

Energy Development.

Energy development is a potentially harmful activity that must be addressed in the EIS and be regulated by the RMP. Wildlife habitat can be fragmented, scenic vistas can be marred and obstructed, air quality degraded, vegetation crushed and altered, and water sources drained and polluted. Primitive areas can be converted into industrial zones, and wilderness and wilderness quality lands can be trammled and degraded by oil and gas related activities. On “split-estates” the rights, and lives, of private surface owners can be severely impacted.

The concerns expressed in this section with regard to oil, gas, and coal development also generally apply to other minerals. The EIS should make similar analyses relative to these minerals. Additionally, many of the recommendations in this section are in conformance with the report “Land Use Planning and Oil and Gas Leasing on Onshore Federal Lands.”³ We request that BLM consider and respond to this report as it develops the RMP.

Oil and Gas Leasing and Land Use Planning Issues.

We believe the revised RMP should prohibit future oil or gas leasing prior to completion of an EIS that analyzes the site-specific impacts of proposed leasing. It is crucial that this “look before you leap” policy be adopted in the RMP to ensure that a lease is not issued before the site

³ National Academy of Sciences, 1989

specific resource values in an area are fully understood. This is necessary to ensure that an informed balancing can be made pursuant to NEPA as to whether leasing is appropriate, or is outweighed by other resource values. Waiting to do site-specific analyses until after a lease is granted is simply too late. If leasing under the revised RMP occurs prior to completion of a site-specific EIS, options are foreclosed, in contravention of NEPA, the ESA, and the definition of multiple-use in FLPMA. Alternatively, the RMP should specify that all leases should be issued with a no surface occupancy stipulation on the entire lease pending completion of a site-specific EIS to determine if surface occupancy can be allowed. We believe these recommendations are consistent with the provisions in BLM's Land Use Planning Handbook.⁴

Furthermore, it is crucial that lease stipulations that ensure necessary protection of public lands be developed and included in the RMP for attachment to all leases. See 43 C.F.R. §§ 3101.1-2 to 3101.1-3. In this regard we again refer the Worland and Cody Field Offices to the nearly-finalized Pinedale RMP for appropriate stipulations, especially relative to wildlife protection. See Proposed Resource Management Plan and Final Environmental Impact Statement for the Pinedale Field Office at 2-139 to -147. Non-waivable no surface occupancy stipulations should attach to leases that could threaten important wildlife habitat or use areas, water resources, recreation areas, etc., particularly if site-specific impacts are unknown or poorly known when the land is leased. All riparian and wetland areas should be subject to no surface occupancy stipulations. The RMP should adopt a prohibition against leasing in any Scenic or Recreational river corridors, or potential corridors, not just Wild river corridors, and failing that no surface occupancy stipulations should be required. ACECs should not be subject to leasing, or, at a minimum, should be subject to no surface occupancy stipulations. Archeological, paleontological, and historical resources must be adequately protected. Lease stipulations are discussed in more detail in the section below dealing with big game species.

The RMP should guide and regulate the configuration and timing of lease offerings when parcels are offered for lease. As discussed above, the provisions in the Pinedale RMP where BLM designated three categories of land for oil and gas development is instructive in this regard. Currently, industry nominates parcels that are typically scattered throughout millions of acres of public lands. As a result, pre-leasing environmental analyses are not based on common airsheds, river drainages, or other ecological units; nor do they adequately assess cumulative impacts. The RMP should ensure that these problems are not perpetuated and should instead regulate the timing and configuration of lease offerings so that rational management is possible.

As noted above, FLPMA requires consideration of the relative scarcity of the values involved, and the availability of alternative sites for producing those values must be considered. See, FLPMA § 202(c). Often, the most appropriate opportunities for oil and gas development from both an economic perspective and ecological perspective are within known and operating oil and gas fields, while the dwindling wildlife, scenic, wilderness and other resource values throughout the rest of the area are irreplaceable and should be protected. The EIS should consider this issue, and again, in our view, oil and gas drilling is not appropriate in potential wilderness quality lands, ACECs, important wildlife habitat, and in areas with important

⁴ In areas of high industry interest that also have other important values, BLM should permit only drilling of exploratory wells. In these areas, data from the initial wells could be used in more detailed environmental studies prior to any further activity. If the studies reveal the need to halt development, lease payments could be refunded.

archeological, historical, or paleontological resources due to the great relative value of the resources involved.

The RMP should explicitly prohibit oil and gas leasing whenever the reasonably foreseeable development scenario (RFD) has been exceeded, especially if this development is occurring due to new technological innovations that have not been subject to adequate environmental review. Coalbed methane (CBM) is a clear example in this regard: many development proposals for this method of extracting methane far outstrip the RFDs in existing RMPs, largely because this technology was not even envisioned when many RMPs were prepared. Moreover, the environmental impacts may not have been adequately evaluated (produced water from CBM development is the obvious example). Under these conditions, leasing should not proceed until updated environmental analyses are completed, and the RMP should so provide. Recent decisions of the Interior Board of Land Appeals (IBLA) require the unique impacts of CBM development to be analyzed.

The BLM must objectively analyze any purported “restrictions” or “impediments” to oil and gas development in the RMP process, and continue regulating this activity as required by law. The BLM should focus analysis of the purported “adverse effects” of lease stipulations on energy supplies on realistic estimates of economically recoverable resources, not just “technically recoverable” resources. If oil and gas is not economical to extract, there will be no adverse impacts on supply from stipulations designed to protect wildlife, archeological sites, recreation sites and other public assets. The BLM should use well-supported high and low range estimates of gas and oil prices in any analysis of the amounts of oil and gas affected by stipulations.⁵

BLM’s regulations regarding environmental protection at the field development and well drilling stage are general and non-specific. *See, e.g.*, 43 C.F.R. § 3162.5-1(b). Consequently, the RMP should adopt specific definitions of what constitutes “due care and diligence,” “undue damage to surface or subsurface resources” and what specifically must be achieved to “reclaim the disturbed surface” And as discussed above, the RMP should define what “unnecessary or undue degradation” means in a direct and positive, and enforceable, way. At a minimum, the requirements of Onshore Oil and Gas Order No. 1, especially relative to reclamation plans, must be strictly complied with, and the EIS should analyze whether wells reclaimed in the past pursuant to these requirements have actually been effectively reclaimed. If not, appropriate modifications should be made to ensure effectiveness. Just as important, it is crucial that the RMP and any subsidiary instruments (leases, APDs, surface use plans, etc.) provide assurance, based on a realistic assessment of past, current and projected budgets and allocations of personnel, of adequate inspection and enforcement as a precondition to lease issuance and operations. Monitoring and enforcement needs are addressed further, below.

The lease acreages limits specified at 43 C.F.R. § 3101.2-1(a) should be monitored and enforced by BLM, and the RMP should make provision for such. BLM Instruction Memoranda (IM) also address the need to comply with these limits on lease acreage holdings, and BLM should insure compliance with these IMs. BLM’s LR2000 database makes this a relatively

⁵ Of course, the stipulations and other protections may be fully warranted (or required) despite any effect they may have on energy supply, and the BLM should acknowledge this.

simple undertaking. To the extent BLM views this as an activity for the State Office or other BLM administrative level, the EIS should nevertheless discuss what actions are being taken at that other level and provide citizens with information so they can become aware of and monitor those efforts.⁶

The regulations at 43 C.F.R. § 3162.3-1(a)(3) allow BLM to regulate well spacing pursuant to “any other program established by the authorized officer”—well spacing designations of the State oil and gas commission are not controlling, at least relative to surface spacing of wells. BLM should fully utilize this authority by specifying, in the final RMP, well spacing surface densities that are appropriate for protecting other resource values in an area, as required pursuant to 43 U.S.C. § 1732(b) and other law. As will be discussed below, specific limits in this regard have been defined relative to sage-grouse by the Wyoming Game and Fish Department.

Private landowners who live on “split estates” are often severely affected by BLM’s oil and gas leasing decisions. BLM has often ignored or given little attention to the legitimate concerns of surface owners and their communities. BLM must minimize conflicts between surface owners and companies developing subsurface minerals by proactively seeking and addressing their concerns in the design and review of projects, including leasing itself. The RMP should provide for this. BLM should make full use of provisions in the Surface Mining Control and Reclamation Act that apply to all mineral development, not just coal. Areas used primarily for residential or related purposes can be deemed unsuitable for mineral development and withdrawn from leasing, or have development activities conditioned appropriately. 30 U.S.C. §1281. BLM also has general withdrawal authority pursuant to 43 U.S.C. § 1714. BLM should make use of these provisions, as well as its general authority to condition development, to protect private surface owners who could be adversely affected by oil and gas development. BLM has also issued IMs regarding surface owner protections as well as releasing recent reports to Congress pursuant to direction in the Energy Policy Act of 2005, and BLM should ensure full compliance with that guidance. Furthermore, the State of Wyoming has developed surface owner protection legislation and the BLM should full consider that law and its application to BLM mineral estates. Wyo. Stat. § 30-5-401 *et seq.* (Wyoming Surface Owner Accommodation Act).

BLM Must Recognize its Retained Rights in Areas That Have Been Leased for Oil and Gas Development and Assert those Rights in the RMP.

Attached as Appendix A is a detailed discussion of BLM’s “retained rights” in areas it has leased for oil and gas development. We believe it is crucial that BLM fully consider the issue of “retained rights” in the EIS and that it make provisions in the RMP that fully exercise those retained rights. This is necessary for BLM to fully protect the resources it has been charged with protecting, including its obligation under FLPMA to take any action that is needed to prevent unnecessary or undue degradation of the public lands.

⁶ This point applies to any activity BLM claims does not need to be fully explored in the EIS or decided in the RMP. Even if true, the RMP and RMP EIS should still assist citizens who desire to get information about these activities and to participate in them. Thus, BLM should, at a minimum, provide a discussion of what is occurring at the other administrative level and provide basic contact information.

1261

Recently the IBLA issued an opinion that discusses BLM’s retained rights, the “reasonable measures” that it can take to protect resources in areas that have been leased. Yates Petroleum Corp., 176 IBLA 144 (September 30, 2008). BLM can regulate the siting and timing of lease activities. Id. at 155 (citing National Wildlife Federation, 169 IBLA 146 (2006) and Colorado Environmental Coalition, 165 IBLA 221 (2005)). The IBLA explicitly rejected the all-too-often made claim (by BLM and industry) that the only “reasonable measures” BLM can impose on a lessee are those in keeping with the “200 meter, 60 day rule”: “. . . Yates’ constrained interpretation of a “reasonable measure” is at odds with the plain language of the regulation [at 43 C.F.R. § 3101.1-2], which describes what measures “at a minimum” are deemed consistent with lease rights, and does not purport to prohibit as unreasonable *per se* measures that are more stringent.” Id. at 156. “BLM need not impose an NSO stipulation on a lease in order to later condition approval of a POD with seasonal restrictions. As we stated above, BLM has authority to impose restrictions on the timing of lease activities.” Id. The Bighorn Basin RMP should fully recognize the degree of these retained rights as affirmed by the IBLA—and as discussed in Appendix A to these comments—and fully exert them.

The exercise of BLM’s retained rights may have special applicability with respect to the provision of the Pinedale RMP that we cited above and asked BLM to adopt in the Bighorn RMP. Again that provision provides that in areas unavailable for future leasing, “[m]anagement actions on existing leases within the Unavailable Areas would be designed to protect important habitats by excluding surface occupancy and/or disturbance to the extent this restriction does not violate the leaseholder’s/operator’s lease rights” with respect to greater sage-grouse, big game, and sensitive species conservation. Based on the IBLA’s opinion in Yates Petroleum and the discussion in Appendix A, it is apparent that BLM can require many conservation measures on existing leases that in no way “violate the leaseholder’s/operator’s lease rights.”

Coalbed Methane Issues.

As indicated above, extraction of CBM has become rampant in some areas, so special precautions must be taken in the RMP to ensure resource protection in the face of this development pressure. The RMP should prohibit discharge of water extracted from coalbeds onto the ground or into surface waters. This is particularly true of saline “produced” water. In addition to salinity problems, produced water—whether from CBM production or from conventional wells—can be contaminated with heavy metals (Se, As, Ba, Hg, etc.). Selenium may be of particular concern, especially relative to impacts on avian species, and it is important to note that if produced water is stored in reservoirs or pits, heavy metals can become even more concentrated than in the produced water itself. The EIS should consider the problem of produced water storage pits/reservoirs leading to concentrated chemical solutions that harm wildlife (or other resources), and should particularly consider compliance with the Migratory Bird Treaty Act in this regard.

Water from CBM development should be reinjected in an environmentally safe manner (i.e., in a manner that ensures groundwater supplies are not contaminated). However, if water from CBM production is discharged, directly or indirectly, into streams, the impacts of augmented flows and increased concentrations of salts (ions) and dissolved solids on the

ecological characteristics of the streams (perennial or intermittent) should be analyzed. Such analyses must account for the full range of variations in stream flow, effluent (produced water) concentrations, and sensitivities of different species at different life-stages. Impacts from altering stream thermal conditions and the timing of flows must be analyzed. Effects of discharged produced water on adjacent riparian areas, and the effects of increased turbidity and sedimentation should be considered. The analysis should consider lethal and sub-lethal effects on biota. If produced waters are or become a “discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged”, they must be treated as point source discharges of pollutants and a National Pollution Discharge Elimination System (NPDES) permit must be required. 33 U.S.C. §§ 1362(14), 1342. See Northern Plains Resource Council v. Fidelity Exploration & Dev. Co., 325 F.3d 1155 (9th Cir, 2003) (CBM produced water is a pollutant for purposes of the Clean Water Act). Based on these analyses, the RMP should provide standards to prevent or mitigate these impacts.

CBM development can lower water tables, which has widespread implications and therefore these issues must be addressed in the EIS. If produced waters are not reinjected, potential effects on agriculture must be considered. Dewatering coalbeds can increase the likelihood of difficult-to-control coal seam fires. Seepage of methane and its effects on vegetation, water (including domestic water and aquifers), and even the safety of people’s homes must be considered. The impacts of seeping methane on greenhouse gas concentrations and global warming should be considered. Again, the RMP must ensure these impacts are prohibited or mitigated.

CBM fields can have a much higher density of wells than occurs in conventional gas fields. Consequently, issues such as habitat fragmentation, outright loss of habitat, and impacts to visual resources are magnified. Because of this, the RMP must ensure that the unique impacts of CBM development are evaluated prior to leasing, and that such analyses do not simply duplicate the analyses done for conventional gas fields. As noted above, recent IBLA decisions require consideration of the unique impacts of CBM development.

Full Field Development and Application for Permit to Drill Issues.

Local residents and other concerned citizens wanting to be involved in the actual development of oil and gas fields and/or drilling of wells are often stymied. One reason participation is stymied is that BLM does not make Notices of Staking (NOS) and APDs readily available to the public in a timely fashion. In some cases citizens are expected to physically review NOSs and APDs by visiting the BLM office, or if they do not live nearby, to make weekly telephone calls to the BLM office to request that these documents be faxed to them. That is unacceptable, and in this day and age there is no reason they should not simply be posted on BLM websites in a timely fashion. Any proprietary or privileged information can be redacted. The lack of availability of NOSs and APDs hampers public participation, which violates NEPA. The BLM should include provisions in the RMP that will correct these problems. This recommendation is consistent with and required by the public participation provisions in the CEQ NEPA regulations, 43 C.F.R. §3162.3-1. The Mineral Leasing Act provision related to notifying persons of APDs is a minimum requirement and does not supercede or abrogate other requirements, such as those in the CEQ NEPA regulations. See 30 U.S.C. § 226(f) (providing

1261

“[t]he requirements of this subsection are in addition to any public notice required by other law.”) (emphasis added).

The EIS must address the issue of granting exemptions and exceptions to lease stipulations at the APD stage. At a minimum, the RMP must identify which stipulations cannot be relaxed and the specific conditions that must be met before a request to exempt or relax any of the others will be granted. In our view, relaxing environmental protections should not be allowed. All too often exemptions or exceptions are granted when a company needs “just a few more days” to complete drilling or other activities. This is not a sufficient reason in our view—the stipulations are clear and companies should be able to complete activities as agreed to, or wait a few months to complete them when resource damage is lessened. Allowing drilling to continue essentially for the convenience of a company leads to unnecessary or undue degradation. Another common rationale for permitting exemptions or exceptions are claims that “game species aren’t on the winter range yet” and other similar justifications. Rationales such as this are insufficient: drilling during a restricted period may prevent animals that would have moved onto the range from doing so, it may disturb and stress animals that are in areas adjacent to or nearby the area being drilled, it may concentrate animals in areas that are not being drilled, it may cause undisturbed areas to be overgrazed and degraded, etc. At a minimum, granting exemptions and exceptions to stipulations constitute Federal actions subject to NEPA; that is an EIS or EA needs to be prepared before they are granted. The public participation requirements of NEPA must be fully complied with. Even if the RMP provides guidance on the circumstances under which relaxation of environmental standards can be allowed, and such guidance was subject to NEPA (as it must be), BLM must still comply with NEPA when actual requests are made and the site-specific consequences can be analyzed. RMP level analysis supporting exemptions and exceptions is simply not site-specific enough to allow for approval of site-specific requests, and the RMP should so provide.

BLM employs Sundry Notices pursuant to 43 C.F.R. § 3162.3-2(a) (authorizing use of Form 3160-5, the Sundry Notice). In our experience, Sundry Notices are used for a wide array of activities, and not necessarily just for “further well operations”, as required by the regulations. The RMP should define precisely when the use of Sundry Notices is appropriate, and in our view they are inappropriate for anything other than the enumerated activities mentioned at 43 C.F.R. § 3162.3-2(a). Additionally, the RMP should define when NEPA compliance is required and what opportunities exist for public involvement relative to Sundry Notices.

Toxic and Hazardous Wastes and Chemicals; Stormwater Runoff.

The use of hydraulic fracturing and the impacts of drilling fluids (muds) and chemicals must be considered in the EIS. Hydraulic fracturing and drilling fluids contain a wide array of chemicals, many of which are clearly toxic or hazardous. The appropriateness of using these chemicals must be addressed in the EIS. We specifically recommend that, if “fracking” is contemplated, the option of requiring water only – i.e., prohibiting the use of toxic chemicals – be considered. The RMP should provide specific guidance regarding the requirements oil and gas companies must abide by to meet the requirements of applicable laws—including community right-to-know laws--and provide for complete and thorough compliance, monitoring, and enforcement by BLM. Spill prevention and cleanup requirements must be specified, and

provisions for collecting and disposing of these wastes must be provided for in detail, again with sufficient monitoring and enforcement to ensure compliance. While Federal pollution and toxic and hazardous waste law may provide some exemptions for the oil and gas industry, BLM still has sufficient authority, and responsibility, under NEPA and FLPMA to require inventory and monitoring of these chemicals, as well as spill prevention, cleanup, and mitigation plans. See, e.g., 43 U.S.C. 1732(b); 43 C.F.R. §§ 3162.4-1(a), 3162.5-1(c)-(d); Onshore Oil and Gas Order No. 1. See also Executive Order No. 13,016 (delegating authority to land management agencies to enforce CERCLA on lands they manage); BLM Manual MS-1703 (Hazardous Materials Management).

In a related issue, BLM should ensure that oil and gas drilling operations (including well pads) comply with any applicable stormwater discharge requirements. See 72 Fed. Reg. 10,308, 10,335 (Mar. 7, 2007) (adopting BLM's revised Onshore Order No. 1, which requires operators to take measures to minimize erosion and sedimentation in section IV.c.). In *Natural Resources Defense Council v. U.S. E.P.A.*, 526 F.3d 591 (9th Cir. 2008), the Ninth Circuit Court of Appeals held that EPA's rule attempting to exempt oil and gas activities from stormwater runoff permitting requirements was illegal and invalidated the rule. Thus, stormwater runoff from oil and gas development activities are subject to Clean Water Act permitting, and the RMP should recognize and require this.

Rights-of-Way.

Rights-of-way are often part-and-parcel of energy development projects, as well as many other activities. All provisions in the Mineral Leasing Act and FLPMA must be adhered to relative to rights-of-way to help ensure environmental protection. We specifically request that the EIS address several issues. The issue of the impact of power lines on birds and bats should be addressed, particularly with regard to raptors. Electrocutions are one negative impact of power lines, and electrocutions could violate the Migratory Bird Treaty Act and Bald Eagle Protection Act, not to mention the ESA. The RMP should have provisions to ensure these laws are not violated if rights-of-way are granted, as well as provisions that specify thorough monitoring and the penalties that will be imposed by BLM for failure to comply. Perhaps just as importantly, power lines change the "structure" of habitat, which may create favorable conditions for some species but be unfavorable for others. For example, there is evidence that ferruginous hawks, which are becoming rare, can be placed at a competitive disadvantage to other raptors when power lines create perches in otherwise open habitat. Likewise, the increasingly imperiled sage-grouse can be further threatened if raptors are provided hunting perches in habitat occupied by sage-grouse. The EIS must take account of these kinds of effects, and the RMP must ensure they are avoided or at least mitigated. For example, the RMP should require that existing rights-of-way, with similar types of structures, be utilized to the extent possible. Similarly, the impacts rights-of-way have on habitat fragmentation must be analyzed in the EIS, and provision made to avoid or mitigate these impacts in the RMP.

Monitoring and Enforcement.

The EIS should include a realistic assessment and analysis of oil and gas well plugging, abandonment, reclamation, and enforcement needs and problems. The RMP must provide that

1261

wells are abandoned and plugged in accordance with the provisions of 43 C.F.R. § 3162.3-4 and Onshore Oil and Gas Order No. 1. In addition, the BLM must not only quantify the needs that projected development will entail in terms of personnel and costs, it must also explain how it will ensure that these needs will in fact be met. In our view, if BLM lacks resources to engage in monitoring and enforcement sufficient to ensure compliance with all requirements applicable to oil and gas drilling on public lands within the RMP area, then it should not allow further development to occur—it should deal with the backlog of cleanup needs first. BLM has sufficient authority, and a responsibility, to prevent development if it lacks sufficient resources to ensure compliance with requirements applicable to oil and gas development. See, e.g., 43 U.S.C. 1732(b).

The RMP should ensure that reclamation standards are enforced and increase bonds to cover actual reclamation costs, so neither taxpayers nor landowners are left to foot the bill. In the past, BLM has estimated the cost of reclaiming just one well ranges from \$2,500 –\$75,000. The EIS should include up-to-date estimates for costs of reclamation of development activities in this area. The RMP should increase bonds as needed to ensure the full costs of reclamation are met and should not rely on per lease bonds (currently set at \$10,000) or on statewide bonds (now \$25,000) if they will not cover anticipated costs. BLM has this authority. See, e.g., 30 U.S.C. § 226(f); 43 C.F.R. §§ 3104.1(a), 3104.5, 3106.6-2. This authority and the responsibility of BLM to adjust bonds as needed to meet reclamation needs has been confirmed in recent BLM IMs.

Coal Development.

The RMP must ensure full compliance with the Mineral Leasing Act and Surface Mining Control and Reclamation Act (SMCRA) for any coal development in the RMP area. The RMP must assure the environmental protection performance standards and reclamation standards required by SMCRA are fully adhered to. The “federal lands program” for coal mining must also be carefully adhered to. The RMP should include provisions that will ensure that BLM works carefully with the State in the regulation of coal mining, and BLM must ensure the State is adequately implementing and enforcing the program. See 30 U.S.C. § 1273 (providing the Federal lands program must consider the “unique characteristics of the Federal lands in question” and that “at a minimum” the Federal lands program shall include the requirements of the State’s program). The EIS should evaluate whether the State is in fact adequately protecting public lands resources and develop means to protect those resources as needed. It should also address any potential new coal mining or expansion of coal mining that might occur so that BLM can work with the Office of Surface Mining to ensure the requirements related to mining plan decisions can be fully complied with.

The provisions for unsuitability determinations in SMCRA must also be fully utilized and complied with. BLM should ensure that “Determinations of the unsuitability of land for surface coal mining . . . shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.” 30 U.S.C. § 1272(a)(5). BLM should ensure that the suitability review for Federal lands complies with the requirements at 30 U.S.C. § 1272(b) and that any needed withdrawals and conditions are made, as provided for in that section. Similarly, BLM should ensure that existing suitability determinations are as up-to-date as possible and in conformance with the RMP. As mentioned

above, the provisions at 30 U.S.C. § 1281 should be fully utilized to protect surface owner rights. Roadless areas, ACECs, unique wildlife habitats, and other special management areas should not be deemed suitable for coal mining.

Renewable Energy Sources and Global Warming.

The EIS must fully address renewable sources of energy in at least two regards. First, it must address potential renewable sources of energy available from lands within the RMP area. It should address the relative merits of pursuing these types of energy developments versus fossil fuel development. It should fully address the potential negative impacts of renewable sources of energy. For example, wind energy farms can have negative consequences for avian species if not properly designed and sited. Biomass energy, if it is derived from old growth forests or other inappropriate sources, can wreak havoc on ecosystems or be little more than a guise for logging. The EIS must address these issues fully and openly. The RMP should adopt provisions to ensure these negative effects are avoided or at least mitigated. Second, the potential for renewable energy sources developed elsewhere to obviate the need for fossil fuel development in the RMP area should be addressed. Almost all agree, fossil fuels are not a long-term solution to our energy needs and that renewable energy production must be fostered, so the EIS should address this aspect of energy development.

The EIS should also consider ways the BLM itself can maximize the use of renewable or alternate energy sources, and increase the efficiency of energy use in all activities BLM undertakes, including in its buildings and automobile fleet. The RMP should require increased use of renewable or alternate sources of energy by BLM and should include requirements for increased energy use efficiency. These efforts should be documented and publicized.

The EIS should address the problem of global warming and the steps BLM can take to reduce this problem. For example, coal seam fires could unnecessarily contribute to global warming. Flaring of hydrocarbon by-products contributes to global warming, and much of that may be unnecessary. Methane leaks or seepage from oil and gas wells may be especially significant given the extremely high heat trapping properties of methane. BLM should make a thorough analysis of how activities it undertakes or authorizes contribute to the generation of carbon dioxide or other “greenhouse gasses,” and the RMP should make provisions to reduce and minimize them.

Wind Energy.

There is a strong movement toward wind energy development in Wyoming. We strongly support the development of wind energy and think that it is crucial for this country to move toward the use of renewable sources of energy rather than fossil fuels. This is necessary both to reduce the environmental impacts of fossil fuels development and to reduce the contribution toward global warming made by burning fossil fuels. That said, as noted above the development of wind energy itself can have significant environmental impacts, especially on wildlife and visual quality. Therefore, it is crucial for the EIS to consider this issue and for the RMP to make provisions to avoid these problems. The RMP should identify areas that are suitable and not suitable for wind energy development, and areas where development may be acceptable if

appropriate mitigation (best management practices) is employed. This need is especially strong along the Absaroka Front and Bald Ridge area. The RMP should provide for careful, site-specific analysis of wind energy sites before proposal are too far advanced or committed to (including via financial commitments). Careful attention to and regulation of siting will likely eliminate or at least greatly reduce any problems attendant to wind energy development.

Livestock Grazing.

Livestock grazing can have profound impacts on wildlife and the public lands. See 43 U.S.C. §§ 1901(a)(1) (determining that “vast segments” of the public rangelands are in unsatisfactory condition), 1751(b)(1) (finding that much federal rangeland “is deteriorating in quality”). Recognizing this, BLM adopted standards and guidelines for grazing administration in 1995 that are designed to restore and protect rangeland health and degraded range conditions. See 43 C.F.R. Subpt. 4180. The RMP should provide a clear and binding schedule for ensuring that the three steps the grazing rules establish for determining if grazing needs to be modified are accomplished in a timely manner.⁷ Furthermore, for allotments that have already been assessed, provision should be made in the RMP for future assessments and determinations—the standards and guidelines are intended to be an ongoing, prominent factor in grazing management, and the Fundamentals of Rangeland Health are standing national requirements. It is also worth noting that pursuant to the Public Rangelands Improvement Act (PRIA), “the goal” of rangeland management “shall be to improve the range condition of the public rangelands” 43 U.S.C. § 1903(b) (emphasis added).

BLM’s standards and guidelines and the Fundamentals of Rangeland Health also have potential applicability and utility for properly managing all resource uses in the RMP area. For example, many standards and guidelines and the Fundamentals of Rangeland Health would be appropriate as stipulations to oil and gas leases to ensure there is no unnecessary or undue degradation. Consequently, as part of this planning effort, the BLM should consider what changes if any are needed to extend the standards and guidelines and Fundamentals of Rangeland Health to all other programs, and the RMP should provide for their adoption as requirements to guide all future management activities and decisions. The standards and guidelines, and the Fundamentals of Rangeland Health, provide a convenient existing means to meet many of the requirements highlighted in these comments, which BLM, through the RMP, should take advantage of.

In addressing livestock grazing in this plan, we urge the BLM to pay special attention to the following. Monitoring and follow-up monitoring needed to ensure any changes necessary to meet the standards and guidelines must be provided for in the RMP. The condition of springs and riparian areas, including biotic and abiotic components, and whether they are in proper functioning condition must be given special attention. The condition of upland areas, including cryptobiotic crusts must be carefully monitored and protected. In all cases where these important resources and areas are not functioning properly, the BLM must include in the RMP mandatory steps that will be taken to remedy these problems.

⁷ The three steps are: assess rangeland health, determine if grazing is a significant factor causing unhealthy rangelands, take appropriate actions to eliminate or modify grazing by the start of the next grazing season.

In accordance with the standards and guidelines, and provisions in the FLPMA and PRIA, the EIS should determine the suitability of lands within the RMP area for livestock grazing and the RMP should require adjustments accordingly. There is no doubt BLM has this responsibility and authority. See, 43 U.S.C. §§ 315 (grazing districts must be chiefly valuable for grazing), 315a (BLM can do “any and all things” necessary to manage grazing), 1701(a)(8) (public lands to be managed to protect environmental values), 1702(c) (multiple use management allows for areas to be deemed unsuitable for certain uses and requires consideration of relative resource values), 1712(a)-(c) (land use plans to be based on multiple use), 1712(d) (land use classifications can be modified or terminated), 1712(e) (allowing for elimination of principle or major uses), 1732(c) (revocation of permits authorized), 1752 (allowing discontinuation of grazing permits and a determination in land use plans of whether lands “remain available for domestic grazing”), 1903(b) (allowing for discontinuation of grazing pursuant to land use planning decisions). See also *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000) (holding that allocation of forage in a land use plan pursuant to 43 C.F.R. § 4100.0-5 does not, on its face, violate the Taylor Grazing Act). Livestock grazing, like all land uses, should only occur in areas where it has been carefully determined, pursuant to the land use planning process, to be a suitable use of the land.

As noted above, the impacts of grazing on riparian areas should receive particular attention in the EIS, and the RMP should make binding and mandatory provisions to deal with the impacts of grazing in riparian areas. BLM’s Riparian-Wetlands Initiative acknowledged the importance of insuring that livestock grazing is compatible with riparian habitat protection, and set an ambitious goal for the agency to achieve. The RMP should achieve these goals. Upland areas, too, may require special livestock management in order to ensure the restoration of fragile areas and cryptobiotic soils, or to protect remnant high condition/seral stage vegetation. BLM should not rely on water developments as a way to transfer grazing pressure from riparian areas to other (usually upland) areas. This approach often does not solve problems; it just moves them from ecosystems with a relatively high ability to recover due to the availability of water (riparian areas) to ecosystems with little or no ability to recover from excessive livestock grazing (uplands).

Requirements related to the Clean Water Act were mentioned above, but they bear repetition in the context of livestock grazing. BLM should ensure there is sufficient water quality monitoring relative to the impacts of livestock grazing, and take concrete steps to guarantee that livestock grazing does not adversely impact water quality or impair designated beneficial uses of these waters. The BLM must collect all data necessary to evaluate and achieve compliance with water quality standards, including in particular standards related to fecal coliform bacteria. Compliance with the Safe Drinking Water Act should also be addressed.

Cryptobiotic Soils

With respect to cryptobiotic soils we offer these further comments. The BLM should survey the extent of cryptobiotic soils crusts in the Bighorn Basin and take appropriate steps to protect areas of high soil crust concentration or particularly vulnerable areas. Cryptobiotic crusts play an essential role in soil health and provide ground cover throughout much of the Big Horn Basin. Soil crusts help to prevent desertification in arid regions and aid in mineral uptake in

1261

vascular plants (particularly nitrogen fixation)⁸. Grazing, off-road vehicles, and energy development are the three major causes for declines in cryptobiotic crusts in the Bighorn Basin and the BLM should regulate these activities with the goal of protecting soil crusts in sensitive areas.

Off-Highway Vehicles.

Off Highway Vehicle (OHV) use is addressed by Executive Orders 11644 (1972) and 11989 (1977), and by regulations at 43 C.F.R. § 8340 *et seq.* Section 8342.1 provides that:

- (a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air or other resources of the public lands, and to prevent impairment of wilderness suitability;
- (b) Areas and trails shall be located to minimize harassment of wildlife or significant disruptions of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats;
- (c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors;
- (d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic or other values for which such areas are established.

Based on this language, and on the enormous potential for damage posed by the use of OHVs, we urge the BLM to require the following in the RMP:

- The RMP should designate specific trails open for OHV use;
- Trails designated as open should be clearly marked so that all users will be aware of where OHV use is, and is not, allowed (this will also assist in effective law enforcement);
- The RMP should prohibit OHV use unless routes are specifically marked and designated as available for that use (i.e., BLM should adopt a “closed unless posted open” policy);
- Even where a route is recognized, constructed, and maintained, BLM still has a responsibility to determine whether recreational OHV use is appropriate on that route.

⁸ Belnap, Jayne. 1995. Surface disturbances: Their role in accelerating desertification. *Environmental Monitoring and Assessment*. 37(1-3), 39-57. Kimball T. Harper and Jayne Belnap, 2001. The influence of biological soil crusts on mineral uptake by associated vascular plants. *Journal of Arid Environments*. 47(3): 347-357. Belnap, Jayne. 1996. Soil surface disturbances in cold deserts: effects on nitrogenase activity in cyanobacterial-lichen soil crusts. *Biology and Fertility of Soils*. 23(4): 362-367.

Similarly, where routes are open for administrative purposes (including authorized uses by permittees), BLM should still ensure the authorization is tailored as narrowly as needed to ensure resource protection while allowing for the valid administrative access. The RMP should make provisions that reflect these requirements.

- The RMP should implement effective, frequent monitoring of OHV impacts, and set clear benchmarks which, if exceeded, trigger closure of an area to OHVs. If monitoring and enforcement cannot be effectively accomplished due to lack of personnel or resources, the RMP should not allow the use.
- In accordance with 43 C.F.R. § 8342.2(c), the RMP should prohibit OHV use in wilderness study areas, other areas the BLM has inventoried and found to have wilderness character, and areas within citizen-proposed wilderness areas. These lands comprise a fraction of the lands within the RMP area, and leave plenty of lands open for OHV use elsewhere.
- The RMP should prohibit OHV use in critical wildlife habitat, winter range, areas critical for nesting, breeding or other reproductive behaviors, and habitat for threatened, endangered or sensitive species, during critical seasons.
- Riparian areas and wetlands are of critical importance to the biological functioning of the RMP area, and are exceedingly rare. OHVs, except on designated trails, are not appropriate in these fragile ecosystems, and the RMP should so provide.
- Pursuant to 43 C.F.R. § 8342.2(a), OHV use impacts must be evaluated “on all resources and uses in the planning area.” Thus, the EIS must evaluate the impacts of OHV use on the full range of resources present in the area, including wilderness quality lands, non-motorized recreation, grazing, water quality, wildlife habitat, scenic quality and other uses.
- The RMP should prohibit unrestricted, cross-country OHV use in the RMP area.

Furthermore, too often we have seen RMPs promise to develop travel plans later, but they never do materialize as other post-planning priorities take over. Moreover, the stopgap method of allowing OHV use on “existing” trails pending completion of the trail designation process should not be pursued because it equates to an open designation as OHVs create new tracks. The “existing trails” designation also creates enforcement problems, with BLM rangers unable to determine if a trail was existing or just-created.

In general, BLM should evaluate the road system in the RMP area and determine the minimum system of routes necessary. Based on that analysis, BLM should close redundant routes; roads with no destination or purpose; illegal, “ghost,” or “wildcat” routes; and roads in sensitive areas. The RMP should make these closures immediately effective, provide for the reclamation of closed routes, and ensure sufficient funding for reclamation, monitoring, and enforcement.

Noise.

The EIS and the RMP itself should address issues related to noise, and its impact on the remoteness and quietness that so many seek on the public lands. We particularly ask that the EIS address, and the RMP provide requirements to minimize, the noise created by oil and gas development activities, especially the noise problems from compressors and compressor stations,

1261

as well as flaring and fracing. Noise occurring due to oil and gas exploration and well drilling should also be minimized. OHV noise should also be addressed.

Invasive Species, Noxious Weeds, and Management of Native Vegetation.

We ask that BLM ensure the RMP provides for compliance with Executive Order 13112, which established requirements and procedures Federal agencies are to adhere to relative to invasive species. Section 2 of the Executive Order requires BLM to identify actions that may affect the status of invasive species and to then:

Use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them

Just as important, the Executive Order requires BLM to “not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.” The EIS should fully analyze the extent of the invasive species problem in this area, the causes, and options for both restoration and prevention in the future.

The flip side of preventing invasive species from becoming established is protecting native plant species and communities, especially rare and special status species. The BLM should conduct surveys to determine the location and characteristics of native plant communities and rare or special status species. The survey results should be presented in the EIS, and the RMP should establish standards for protecting native plant communities and rare or special status species. BLM’s grazing regulations and the PRIA establish that native species and plant communities are to be given preference over non-native species and communities (whether invasive or intentionally created), so the RMP should establish standards to ensure these requirements are met. To prevent invasive species dominance, and to favor native species and plant communities over non-natives, we make the following requests:

- The RMP must insure that no cross-country vehicular (motorized and bicycle) travel is allowed in known habitat or locations of sensitive plant species.
- The RMP must not allow surface disturbing activities in threatened, endangered or sensitive plant species habitat.
- The RMP must target areas with threatened, endangered, or sensitive plants for noxious weed control activities as a first priority.